Oklahoma Law Review

Volume 73 | Number 4

2021

Pleadings in a Pandemic: The Role, Regulation, and Redesign of Eviction Court Documents

Daniel W. Bernal

PLEADINGS IN A PANDEMIC: THE ROLE, REGULATION, AND REDESIGN OF EVICTION COURT DOCUMENTS

DANIEL W. BERNAL*

Abstract

As federal and state eviction moratoriums are lifted, millions of Americans face the imminent threat of eviction. To improve participation in the judicial process, safeguard against unnecessary or unjust evictions, and minimize the impact of those with good cause, courts must ensure that tenants understand their rights and options. Yet, the notice and pleading documents that should serve to encourage participation all too often do the opposite. This is no accident; such documents are frequently designed by the very landlords suing for eviction. To measure the impact of this practice, I investigate the usability and influence of the notice and pleading documents filed by landlords in one Arizona housing court. Through an analysis of three months of eviction data, I find suggestive evidence that tenants who receive landlord-created (as opposed to court-created) pleading documents are 16% less likely to attend their eviction hearing. I conclude by proposing two low-cost solutions: model eviction notice and pleading forms, and legislative and judicial solutions to mandate their use.

Table of Contents

* J.D., Ph.D.; Stanford Legal Design Lab Fellow. I would like to thank Deborah Rhode, Rob MacCoun, Juliet Brodie, and Jacob Goldin for their thoughtful reviews of earlier drafts of this Article. I would also like to thank John Donohue for his review of the empirical work in this piece, and Bernadette Meyler, Barbara Fried, and our entire cohort for reviewing the very first draft of this project during our Legal Studies Workshop. Finally, I am grateful to Margaret Hagan at the Stanford Legal Design Lab for helping me to create these model eviction forms and for all her contributions to the redesign of housing court.

> *A landlord-tenant dispute, like any other lawsuit, cannot be resolved with due process of law unless both parties have had an opportunity to present their cases. Our courts were never intended to serve as rubber stamps for landlords seeking to evict their tenants, but rather to see that justice be done before a man is evicted from his home.*[1]

Introduction

With eviction moratoriums lifting across the country, one out of every five renters may soon be at risk of eviction.[2] This eviction tsunami will cause much more than legal debt and the loss of housing. Eviction is often correlated with deteriorating mental and physical health,[3] homelessness or

1. Pernell v. Southall Realty, 416 U.S. 363, 384–85 (1974) (finding that the Seventh Amendment requires a jury trial in summary proceedings and rejecting arguments that trial by jury would eliminate the summary nature of the proceedings).

2. Michelle Wilde Anderson & Shamus Roller, *The Time for a Nationwide Eviction Moratorium Is Now*, HILL (July 25, 2020, 9:00 AM EDT), https://thehill.com/opinion/civil-rights/508998-the-time-for-a-nationwide-eviction-moratorium-is-now. The initial eviction moratorium for certain federally covered properties expired on July 24, 2020. *See* Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, § 4024, 134 Stat. 281, 492 (2020). Numerous states and the District of Columbia have placed additional moratoriums on eviction. For a review (and rating) of the eviction moratoriums enacted by each state, see *COVID-19 Housing Policy Scorecard*, EVICTION LAB, https://evictionlab.org/covid-policy-scorecard/ (last visited Mar. 16, 2021). Even states, however, that have not imposed eviction moratoriums have had de facto moratoriums with widespread court closures. *See, e.g.*, Dan Horn, *Landlord Sues to Reopen Eviction Court, Says Tenants Are Becoming 'Squatters'*, CIN. ENQUIRER (June 2, 2020, 10:37 PM ET), https://bit.ly/3gGeAsO.

3. *See, e.g.*, Janet Currie & Erdal Tekin, *Is There a Link Between Foreclosure and Health?*, 7 AM. ECON. J. 63, 86–87 (2015) ("[T]he estimates imply that 2.82 million foreclosures in 2009 resulted in an additional 2.21 million nonelective [hospital]

unsafe housing,[4] job loss,[5] and even suicide.[6] And a highly communicable disease, best fought with quarantine, still ravages our country.[7] A surge of

---

visits . . . ."); Theresa L. Osypuk et al., *The Consequences of Foreclosure for Depressive Symptomatology*, 22 ANNALS EPIDEMIOLOGY 379, 385 (2012); Matthew Desmond, Carl Gershenson & Barbara Kiviat, *Forced Relocation and Residential Instability Among Urban Renters*, 89 SOC. SERV. REV. 227, 246–48 (2015) (reviewing health consequences of forced moves); Megan Sandel et al., *Unstable Housing and Caregiver and Child Health in Renter Families*, PEDIATRICS, Feb. 1, 2018, at 1, 8, https://pediatrics.aappublications.org/content/pediatrics/141/2/e20172199.full.pdf (finding three forms of housing instability to be associated with adverse caregiver and child health); Matthew Desmond & Rachel Tolbert Kimbro, *Eviction's Fallout: Housing, Hardship, and Health*, 94 SOC. FORCES 295, 312–13 (2015) (finding that evicted mothers were more likely to suffer from depression, report worse health for themselves and their children, and experience more parenting stress).

4. Maureen Crane & Anthony M. Warnes, *Evictions and Prolonged Homelessness*, 15 HOUS. STUD. 757, 769–71 (2000); MATTHEW DESMOND, EVICTED: POVERTY AND PROFIT IN THE AMERICAN CITY 299 (2016); Matthew Desmond & Tracey Shollenberger, *Forced Displacement from Rental Housing: Prevalence and Neighborhood Consequences*, 52 DEMOGRAPHY 1751, 1751 (2015) ("Multivariate analyses suggest that renters who experienced a forced move relocate to poorer and higher-crime neighborhoods . . . .").

5. Matthew Desmond & Carl Gershenson, *Housing and Employment Insecurity Among the Working Poor*, 63 SOC. PROBS. 46, 47 (2016) (finding that the likelihood of being laid off is "between 11 and 22 percentage points higher for workers who experienced a preceding forced move," compared to workers who did not).

6. *See generally* Katherine A. Fowler et al., *Increase in Suicides Associated with Home Eviction and Foreclosure During the US Housing Crisis: Findings from 16 National Violent Death Reporting System States, 2005-2010*, 105 AM. J. PUB. HEALTH 311 (2015). There is scholarly debate as to whether these socio-economic effects are caused by an eviction or are merely correlated with it. *See* John Eric Humphries et al., Does Eviction Cause Poverty? Quasi-Experimental Evidence from Cook County, IL 27–28 (Cowles Found., Discussion Paper No. 2186, 2019) (finding only small causal effects of an eviction order on financial strain, household moves, and neighborhood quality and suggesting that the significant distress prior to eviction court for both evicted and non-evicted tenants may be a greater cause, and not the eviction itself, on the fallout of this process); *see also* Richard Collinson & Davin Reed, *The Effects of Evictions on Low-Income Households*, NYU LAW 1 (Dec. 2018), http://www.law.nyu.edu/sites/default/files/upload_documents/evictions_collinson_reed.pdf (finding "some evidence that evictions lower earnings modestly, but little evidence that they substantially worsen employment outcomes or increase receipt of public assistance").

7. *See Interim Guidance on Unsheltered Homelessness and Coronavirus Disease 2019 (Covid-19) for Homeless Service Providers and Local Officials*, CTRS. FOR DISEASE CONTROL & PREVENTION, https://www.cdc.gov/coronavirus/2019-ncov/community/homeless-shelters/unsheltered-homelessness.html [https://perma.cc/ZE7Z-8FPA] (last updated Mar. 23, 2021).

twenty million unhoused individuals would seriously threaten public health.[8]

To protect tenants and the nation, elected officials have promulgated special COVID-19 renter protections to supplement existing legal rights.[9] But such efforts will have limited effect if tenants do not know their rights or how to secure them. And, any protections that require tenant action are unlikely to benefit the more than two-thirds of all tenants who do not attend or otherwise participate in their hearing.[10]

The law intends to solve these problems, in part, by ensuring that the eviction notice, summons, and complaint encourage case participation and provide clear and usable information about court procedure, legal rights, and options. But, rather than providing support, these documents, frequently designed by landlords, often act as another barrier.

This is not a new problem. While legislatures have increased substantive protections for tenants over the last fifty years, eviction procedures have not kept pace.[11] Summary eviction proceedings, "designed for speed rather than fairness," undercut tenants' ability to access protections such as the habitability defense.[12] So far, providing legal representation for tenants is the preferred solution. But the record is mixed as to whether representation improves case outcomes,[13] and overall funding for legal aid services has declined.[14] As a result, many jurisdictions seek other low-cost reform.

Redesigning eviction notice and pleading materials is one under-explored option. Consider two ways notice and pleading forms may impact substantive rights. First, consider tenants who erroneously believe that if

8. *See* Eric Levitz, *This Recession Is a Bigger Housing Crisis than 2008*, NEW YORK: INTELLIGENCER (July 13, 2020), https://nymag.com/intelligencer/2020/07/coronavirus-recession-evictions-crisis-congress.html (citing Emily Benfer, the Chair of the American Bar Association's Task Force Committee on Eviction).

9. *See COVID-19 Housing Policy Scorecard*, *supra* note 2.

10. Daniel Bernal & Andy Yuan, Self-Help Is No Panacea: A Field Experiment on the Impact of Self-Held Mailers in an Arizona Housing Court, *in* Daniel Bernal, Eviction by Design: The Role of Court Documents, Self-Held Materials, and Judicial Actors in the Tenant Experience of Summary Eviction 144, 149 n.6 (2019) (Ph.D. dissertation, Univ. of Ariz.), http://hdl.handle.net/10150/636536. A study conducted in Arizona found that only 22% of tenants in our survey came to court. Bernal, *supra*, at 84.

11. *See infra* notes 51–53 and accompanying text.

12. Mary B. Spector, *Tenants' Rights, Procedural Wrongs: The Summary Eviction and the Need for Reform*, 46 WAYNE L. REV. 135, 137 (2000); *see also infra* notes 51–53.

13. *See infra* notes 47–48.

14. Deborah L. Rhode & Scott L. Cummings, *Access to Justice: Looking Back, Thinking Ahead*, 30 GEO. J. LEGAL ETHICS 485, 488–90 (2017).

they just leave the unit without attending court, their landlord will dismiss their case.[15] In reality, these tenants often *automatically* lose their cases and end up with an eviction on their record. Redesigning court documents and leveraging behavioral nudges could clarify this misconception and encourage tenant participation. Second, consider the real-world example of a tenant who repeatedly asked her landlord to fix her air conditioner in the 110-degree Arizona summer and was ultimately evicted when she withheld rent as a bargaining tool.[16] The tenant received several threatening and confusing legal documents from her landlord, but nothing that clearly described her rights—including the right to a livable home, to make repairs instead of paying rent, and to file a counterclaim to offset the amount owed.[17] When she came to court, she could not prove that she gave her landlord notice when withholding rent, and she did not know how to draft a counterclaim to enforce the warranty of habitability.[18] With the added legal fees, the money she set aside to make the payment was no longer enough.[19] As a result, she owed more than $2000 and still lost her home.[20] To prevent similar cases, court documents could be redesigned to detail the procedural steps tenants must take to exercise the most common substantive rights, like a claim of habitability.

Better notice and pleading materials will not change inequitable systems, but they may help tenants understand what steps to take to be heard. This need has only grown more acute in the midst of the COVID-19 pandemic. To take advantage of renter protections, tenants in most states must follow a detailed procedure.[21] In Arizona, for example, the statewide eviction moratorium only stopped the constable from physically removing the tenant if the tenant had: (1) notified the landlord or property manager *in writing* of

15. *See* Desmond & Kimbro, *supra* note 3, at 299.

16. Daniel W. Bernal, *Eviction and the Promise of Self-Help Technologies*, STAN. L. SCH.: STAN. LAWYER, Fall 2018, https://law.stanford.edu/stanford-lawyer/articles/eviction-and-the-promise-of-self-help-technologies/.

17. ARIZ. REV. STAT. ANN. § 33-1324 (West, Westlaw through 55th Leg., 1st Reg. Sess.) (right to a livable unit); *id.* § 33-1363 (right to make repairs instead of paying rent); *id.* § 33-1365 (right to off-set by counterclaim). She also has the right to counterclaim in the summary eviction proceedings, rather than to have the case severed, as the judge ruled. *See id.*

18. *See* Bernal, *supra* note 16.

19. *See id.*

20. *See id.*

21. For a review of the housing policies enacted by states, see *COVID-19 Housing Policy Scorecard*, *supra* note 2.

temporary financial hardship or state of quarantine as a result of COVID-19, (2) requested a payment plan, and (3) provided proof of a submitted application for rental assistance through a state, city, county, or nonprofit program.[22] While eviction notices and pleading documents are the obvious candidates for providing this information to tenants, landlord-created documents have largely remained silent on these issues.[23] This omission may impact tenant action. For example, one survey of Arizona tenants found that while almost 90% of tenants verbally communicated a qualifying COVID-19 concern to their landlord, only half requested a payment plan, and only 28% served a written letter.[24]

Design and politics are the two major barriers to implementing better eviction notice and pleading documents. First, it is difficult to create court documents that can overcome the psychological barriers tenants face and help them navigate the complex substantive and procedural judicial process. Second, many courts have asked landlords to solve (or, rather, allowed them to not solve) this design problem. While courts and legislatures have recommended options for how notice and pleading documents are created and distributed, many states delegate at least some of this responsibility to the evicting landlord. In the majority of states, landlord control results from the court's failure to create—or mandate—plain language forms.[25] Other

22. Ariz. Exec. Order No. 2020-49 (July 16, 2020), https://azgovernor.gov/file/35283/download?token=J9GgzLBE.

23. From a brief survey of the eviction court documents publicly filed on August 3, 2020 (on file with author). In October 2020, the Arizona Supreme Court partially remedied this problem by issuing an administrative order requiring landlords to provide tenants with an additional one-page notice entitled "Information on Temporary Halt in Residential Eviction for Nonpayment of Rent," "as soon as practicable but not later than October 24, 2020 until the CDC order expires on December 31, 2020." *See* Ariz. Sup. Ct. Admin. Order No. 2020 - 159, https://www.azcourts.gov/Portals/22/admorder/Orders20/2020-159%20FINAL%20pdf.pdf?ver=2020-10-07-154943-473.

24. Memorandum from C.H. Huckleberry, Cnty. Adm'r, to Pima Cnty. Bd. of Supervisors (June 15, 2020), https://bit.ly/2Dx5vDE; *see also* Patty Machelor, *Despite Available COVID-19 Reprieve, Pima County Evictions Uneven, Frequent*, TUCSON.COM (June 16, 2020), https://bit.ly/2D7ozZH. Tenants also remained confused about how to appear virtually or telephonically in court, and how to present evidence in these settings, all information which could be easily provided in notice and pleading documents. *Id.*

25. Plain language refers to language that is easy to understand at an initial read. *See infra* note 38. For a comprehensive survey of the states that have developed plain language court forms, and of those which require their mandatory use, see generally Charles R. Dyer et al., *Improving Access to Justice: Plain Language Family Law Court Forms in Washington State*, 11 SEATTLE J. FOR SOC. JUST. 1065 (2013).

states require courts to mandate use of plain language forms for self-represented landlords but not for lawyers.[26] Sometimes state legislatures get involved by, for example, permitting landlord drafting while still requiring certain content.[27] And in one extreme case, after extensive lobbying by landlords,[28] the Arizona legislature prohibited courts from mandating use of plain language eviction notice and pleading forms, declaring any landlord-created form meeting minimum standards to be sufficient.[29] In effect, this law stripped the Arizona judiciary of a vital tool for ensuring due process in eviction proceedings. Regardless of the degree of landlord control, however, all courts might benefit from redesigning materials to address COVID-19's impact on court procedures and tenant defenses.

This Article is the first to study the role that notice and pleading documents play in the judicial process of summary eviction. Studies from a variety of disciplines show that greater readability and behavioral strategies can influence the understanding and behavior of readers.[30] Empirical legal studies, however, have primarily focused on the competitive advantage that clear language provides to litigants—e.g., that readable legal documents secure more favorable case outcomes.[31] In contrast, this Article explores the competitive advantage that complex language may provide to landlords. Left unregulated or under-regulated by courts and legislatures, such forms play an outsized role in a tenant's ability to meaningfully participate in the judicial process allegedly designed to give them a fair trial.

---

26. *See, e.g.*, IOWA CT. R. 17.1. The eviction forms created by Iowa are overviewed in IOWA CT. R. Form 3.6.

27. *See, e.g.*, ARIZ. R. P. EVICTION ACTIONS 5(b)(6), AZ ST EVICTION Rule 5 (Westlaw) ("The Complaint shall . . . [s]tate in bold print, capitalized, and underlined at the top center of the first page, below the case caption: 'YOUR LANDLORD IS SUING TO HAVE YOU EVICTED. PLEASE READ CAREFULLY.'").

28. *See infra* notes 227–30 and accompanying text.

29. ARIZ. REV. STAT. ANN. § 33-361(F) (West, Westlaw through 55th Leg., 1st Reg. Sess.). It also bars courts from requiring specific content or formatting in notice or pleading documents. *Id.* This bill was enacted in response to a proposed amendment to require landlords to use the plain language pleading forms created by an Access to Justice court workgroup. *See* Order Continuing this Matter and Reopening the Petition for Comment at attach., *In re* Rules 5(a), 5(b)(6), 5(b)(7) and Add Rules 13(h) and 20, Arizona Rules of Procedure for Eviction Actions, No. R-16-0040 (Ariz. Dec. 14, 2016), https://www.azcourts.gov/Portals/20/2016%20December%20Rules%20Agenda/R_16_0040.pdf (attaching the model notice and pleading forms to the proposed amendment).

30. *See infra* note 33.

31. *See infra* notes 34–37 and accompanying text.

The Article proceeds as follows. Part I describes the contribution this Article makes to existing research in landlord-tenant law, legal design, and civil justice. Part II describes the results of an empirical study analyzing three months of eviction data in Pima County Consolidated Justice Court. This Article finds suggestive evidence that court participation is positively correlated with the use of court-created, rather than landlord-created, pleading documents. When controlling for landlord representation, tenant ethnicity, and distance from court, the data shows that tenants who received court-created documents were 16% more likely to attend their hearing. In addition, tenants who received court-created documents were 10% less likely to default in response to their eviction action. Part III attempts to explain this disparity by comparing unregulated, landlord-created forms against the design standards courts use to measure usability. Part IV presents suggestions for overcoming the two major barriers to implementing better eviction court documents: sample eviction notice and pleading forms, and model legislative and judicial solutions to ensure courts can mandate form use.

I. Background

Housing law scholars have studied the impact of tenant representation and analyzed the procedural barriers tenants face when exercising substantive rights.[32] However, existing research has neither discussed whether eviction notice and pleading documents might serve as one of these procedural barriers, nor attempted to measure their impact. In addition, while studies from a variety of disciplines prove that usability can influence the understanding and behavior of readers,[33] empirical legal studies have

32. *See infra* notes 47–49 and accompanying text.

33. *See generally* Justine S. Hastings & Jeffrey M. Weinstein, *Information, School Choice, and Academic Achievement: Evidence from Two Experiments*, 123 QUART. J. ECON. 1373 (2008) (parental school choice); Eric P. Bettinger et al., *The Role of Application Assistance and Information in College Decisions: Results from the H&R Block FAFSA Experiment*, 127 QUART. J. ECON. 1205 (2012) (applications for college financial aid and college enrollment); Jeffrey R. Kling et al., *Comparison Friction: Experimental Evidence from Medicare Drug Plans*, 127 QUART. J. ECON. 199 (2012) (health care choices); John Beshears et al., *Simplification and Saving*, 95 J. ECON. BEHAV. & ORG. 130 (2013) (savings/investment decisions); William Shrank et al., *Effect of Content and Format of Prescription Drug Labels on Readability, Understanding, and Medication Use: A Systematic Review*, 41 ANNALS PHARMACOTHERAPY 783 (2007) (patient comprehension); Shauna Reilly & Sean Richey, *Ballot Question Readability and Roll-Off: The Impact of Language Complexity*, 64 POL. RES. Q. 59 (2011) (voting behavior); Reuven Lehavy et al., *The Effect*

primarily focused on the competitive advantage clear language provides to litigants—particularly to litigants in the Supreme Court. This Article makes three primary contributions to this literature.

A. Readability as Access to Justice

In contrast to previous literature, this Article examines how document readability impacts non-judicial actors. Historically, empirical legal studies have primarily focused on the impact of document readability on case outcomes in the highest court. The two most prominent empirical studies on legal writing, for example, present contradictory findings as to whether there is a statistically significant relationship between Supreme Court brief readability and appellate success.[34] Long and Christensen conclude that "readability, as determined by the Flesch Reading Ease scale, is a non-issue for legal writing at the appellate level."[35] In contrast, Feldman, who adopts a much more robust understanding of "higher-quality writing," finds that better writing both "increases the likelihood of winning and increases the amount of language the Court shares with briefs."[36] Regardless of the true effect, these studies both focus on how readability of court documents impacts highly educated insiders. These reports, therefore, are unlikely to generalize to low-income tenants navigating housing court. In addition, a 2018 study found that brief readability in both state and federal courts is significantly correlated to summary judgment success.[37] While the 2018

of Annual Report Readability on Analyst Following and the Properties of Their Earnings Forecasts, 86 ACCT. REV. 1087 (2011) (associating less readable 10-K filings with lower analyst earnings forecasts). In addition, a recent IRS field experiment found that simplification of the tax materials significantly increased the take-up rate and that an additional revision displaying a range of potential benefits in the headline of the simplified notice further improved take-up. *See* Saurabh Bhargava & Dayanand Manoli, *Psychological Frictions and the Incomplete Take-Up of Social Benefits: Evidence from an IRS Field Experiment*, 105 AM. ECON. REV. 3489, 3491 (2015) (finding the take-up rate increased from 0.14 to 0.23).

34. *Compare* Lance N. Long & William F. Christensen, *Does the Readability of Your Brief Affect Your Chance of Winning an Appeal?*, 12 J. APP. PRAC. & PROCESS 145, 145–47 (2011) (finding no statistical significance), *with* Adam Feldman, *Counting on Quality: The Effect of Merits Brief Quality on Supreme Court Decisions*, 94 DENV. L. REV. 43, 62–68 (2016) (finding statistical significance).

35. Long & Christensen, *supra* note 34, at 147.

36. Feldman, *supra* note 34, at 67.

37. Shaun B. Spencer & Adam Feldman, *Words Count: The Empirical Relationship Between Brief Writing and Summary Judgment Success*, 22 J. LEGAL WRITING INST. 61, 62 (2018) (observing a much stronger correlation in federal courts). For another example, see

study focuses on effective language at the trial court level, it still centers on the impact of court materials on *judicial* actors.

Despite the lack of legal academic research, the importance of accessible language and usable court documents for court customers is well understood by the judiciary. Over the past several decades, "plain language"[38] has become a way to operationalize access to justice, achieve government accountability, and create an informed citizenry.[39] Virtually every state court system makes plain language notice, pleading, and self-help materials available to unrepresented litigants.[40] Some advocates even view *Turner v. Rogers* as an indirect Supreme Court endorsement of plain language documents as one "alternative procedural safeguard" that can help to ensure due process.[41] While plain language and document design for usability have become best practices,[42] scant empirical research exists to

---

Lance N. Long & William F. Christensen, *Clearly, Using Intensifiers Is Very Bad–Or Is It?*, 45 IDAHO L. REV. 171, 173 (2008) (finding, in some situations, a statistically significant relationship between the use of intensifiers in appellants' briefs and success on appeal).

38. The federal government describes plain language as "communication your audience can understand the first time they read or hear it." *What Is Plain Language?*, PLAINLANGUAGE.GOV, http://www.plainlanguage.gov/whatisPL (last visited Mar. 16, 2021); *see also* JOSEPH KIMBLE, WRITING FOR DOLLARS, WRITING TO PLEASE: THE CASE FOR PLAIN LANGUAGE IN BUSINESS, GOVERNMENT, AND LAW 31–35 (2012). Presidents Nixon, Carter, Reagan, and Clinton all created plain language regulations. *See, e.g.*, Exec. Order No. 12044, 43 Fed. Reg. 12661 (Mar. 23, 1978). This movement culminated in President Obama's signing of the Plain Writing Act of 2010 requiring all federal agencies to put into "plain writing" any new or revised "letter, publication, form, notice, or instruction." Plain Writing Act of 2010, Pub. L. No. 111-274, § 3(2)–(3), 124 Stat. 2861, 2861. Calls to write plainly can be traced back to at least Cicero. MARCUS TULLIUS CICERO, CICERO: ORATOR 78 (H.M. Hubbell trans., Harv. Univ. Press 1962).

39. *See* Dyer et al., *supra* note 25, at 1082–90. For example, the Washington State Access to Justice Board created plain language versions of family law forms. *See id.* at 1068. Often this was done by simplifying court forms and creating plain language self-help materials. *See id.* at 1078–80.

40. *See id.* at 1073–76. States vary, however, in the extent to which they mandate or merely accept plain language court forms. *Id.*

41. *See* Turner v. Rogers, 564 U.S. 431, 448 (2011). For a discussion of *Turner*'s influence in the access to justice movement, see Jessica K. Steinberg, *Demand Side Reform in the Poor People's Court*, 47 CONN. L. REV. 741, 788–98 (2015) [hereinafter Steinberg, *Demand Side Reform*].

42. *See* AM. BAR ASS'N, STANDARDS FOR LANGUAGE ACCESS IN COURTS 84–85 (Feb. 2012), http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_standards_for_language_access_proposal.authcheckdam.pdf (including plain language translations as one of the standards for language access in the courts). In addition, the Self Represented Litigant Network has a "plain language" workgroup that

evaluate its impact. In fact, while some new research exists about court summons redesign,[43] most empirical research in this area has focused on the usability of jury instructions.[44] This jury research has shown that inaccessible instructions exclude jurors with lower levels of education from equal participation[45] and can lead to misinformed verdicts.[46] If inaccessible jury instructions can have such impacts, inaccessible and unusable court documents may also disparately affect citizens and lead to misinformed outcomes.

B. Redesign as Eviction Intervention

Previous studies of eviction interventions have primarily focused on providing representation to tenants who seek it out. While some research finds that representation did not improve case outcomes,[47] other studies find a positive effect.[48] Such interventions are unlikely to significantly impact

produces guidelines on its website. *See SRLN Brief: Plain Language Resources for 100% Access*, SELF-REPRESENTED LITIG. NETWORK (Feb. 26, 2021), https://www.srln.org/node/150.

43. *See generally* Alissa Fishbane, Aurelie Ouss & Anuj K. Shah, *Behavioral Nudges Reduce Failure to Appear for Court*, 370 SCIENCE 682 (Nov. 2020); MARIA MINDLIN, IS PLAIN LANGUAGE BETTER? A COMPARATIVE READABILITY STUDY OF PLAIN LANGUAGE COURT FORMS, https://www.transcend.net/library/legalCourts/PLStudy.pdf.

44. *See generally* Charles W. Otto, Brandon K. Applegate & Robin King Davis, *Improving Comprehension of Capital Sentencing Instructions: Debunking Juror Misconceptions*, 53 CRIME & DELINQUENCY 502 (2007); Joshua P. Davis, Shannon Wheatman & Cristen Stephansky, *Writing Better Jury Instructions: Antitrust as an Example*, 119 W. VA. L. REV. 235 (2016); Amy E. Smith & Craig Haney, *Getting to the Point: Attempting to Improve Juror Comprehension of Capital Penalty Phase Instructions*, 35 L. & HUM. BEHAV. 339 (2011). For a review of studies that have shown to improve juror comprehension, see Jonathan Barnes, Comment, *Tailored Jury Instructions: Writing Instructions That Match a Specific Jury's Reading Level*, 87 MISS. L.J. 193, 218–25 (2018).

45. *See* Shari Seidman Diamond, Beth Murphy & Mary R. Rose, *The "Kettleful of Law" in Real Jury Deliberations: Successes, Failures, and Next Steps*, 106 NW. U. L. REV. 1537, 1594–96 (2012).

46. *See* Nancy S. Marder, *Bringing Jury Instructions into the Twenty-First Century*, 81 NOTRE DAME L. REV. 449, 457–58 (2006).

47. D. James Greiner, Cassandra Wolos Pattanayak & Jonathan Hennessy, How Effective Are Limited Assistance Programs? A Randomized Experiment in a Massachusetts Housing Court 1 (Mar. 12, 2012) (unpublished manuscript), https://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID2140221_code1300384.pdf?abstractid=1880078&mirid=1.

48. *See* D. James Greiner, Cassandra Wolos Pattanayak & Jonathan Hennessy, *The Limits of Unbundled Legal Assistance: A Randomized Study in a Massachusetts District Court and Prospects for the Future*, 126 HARV. L. REV. 901, 903–04 (2013); Carroll Seron, Martin Frankel & Gregg Van Ryzin, *The Impact of Legal Counsel on Outcomes for Poor*

outcomes for tenants who are most prone to default without ever seeking help.[49] Moreover, representation is costly, and funding for legal aid is declining.[50] Redesigning eviction notice and pleading materials is one low-cost intervention.

This study also supplements existing housing law literature that details how the tenants' rights revolution of the past half-century has failed to produce meaningful improvement in the living conditions of the urban poor.[51] Many of these scholars argue that the summary nature of eviction proceedings hamstrings tenant participation and their ability to employ substantive defenses.[52] For example, a recent study of 40,000 evictions

---

Tenants in New York City's Housing Court: Results of a Randomized Experiment, 35 L. & SOC'Y REV. 419, 429–32 (2001); Jessica K. Steinberg, *In Pursuit of Justice? Case Outcomes and the Delivery of Unbundled Legal Services*, 18 GEO. J. POVERTY L. & POL'Y 453, 456 (2011).

49. *See* Greiner, Pattanayak & Hennessey, *supra* note 48, at 908. Greiner, Pattanayak, and Hennessey found that two-thirds of tenants who were offered full representation maintained control of their unit as compared to one-third of the tenants who were not offered representation. *Id.* They note that the selection process "might have been sufficient on its own to produce a client base for this study that was not representative of all low- or moderate-income occupants in the district court's summary eviction calendar." *Id.* at 939. The authors conclude, "[I]t is hard to know how much the results observed here would generalize to a program that offered representation to all summary eviction occupants, per the criminal law model." *Id.*

50. *See* Rhode & Cummings, *supra* note 14, at 488.

51. Mary B. Spector, *Tenants' Rights, Procedural Wrongs: The Summary Eviction and the Need for Reform*, 46 WAYNE L. REV. 135, 138 (2000); David A. Super, *The Rise and Fall of the Implied Warranty of Habitability*, 99 CALIF. L. REV. 389, 423 (2011); *see* Mary Ann Glendon, *The Transformation of American Landlord-Tenant Law*, 23 B.C. L. REV. 503, 575 (1982). For a discussion of the tenants' rights revolution, see Gerald Korngold, *Whatever Happened to Landlord-Tenant Law?*, 77 NEB. L. REV. 703, 703 (1998) (recognizing that in this era, "no area of the law was more vibrant than landlord-tenant"). The first case to recognize that a tenant could raise an implied warranty of habitability claim as a defense to eviction was *Javins v. First National Realty Corp.*, 428 F.2d 1071 (D.C. Cir. 1970). *See* Korngold, *supra*, at 704 & n.5. Two years after *Javins*, the National Conference of Commissioners on Uniform State Laws drafted the Uniform Residential Landlord and Tenant Act. *See id.* at 703–04. Section 2.104(a) codifies landlords' duty to make all repairs necessary to put and keep the premises in a fit and habitable condition, some version of which has now been adopted by statute in almost half the states. *State Adoptions of URLTA Landlord Duties*, NAT'L CONF. STATE LEGISLATURES, https://perma.cc/R35S-3PUE (last visited Apr. 10, 2021).

52. Super, *supra* note 51, at 434–39; *see* Alan M. Weiberger, *Up from* Javins*: A 50-Year Retrospective on the Implied Warranty of Habitability*, 64 ST. LOUIS U. L.J. 443, 459–

found only eighty instances of tenants asserting their landlord's breach of the implied warranty of habitability as a defense to nonpayment of rent, even though many tenants experienced substandard rental conditions.[53] This Article contributes to this discussion by analyzing the role that notice and pleading documents might play in a tenant's inability to understand and apply these substantive defenses.

Though evicted tenants would likely benefit greatly from usability redesign, such efforts have been less common in housing courts than in other areas of the law.[54] This disparity may be because eviction, unlike family law, for example, typically does not involve two unrepresented litigants, or because the litigant seeking redress in eviction cases (and therefore most directly interacting with the court) is often the represented party. Alternatively, it may be because the represented party in eviction is backed by powerful organizations and lobbyists with stakes in an efficient (and perhaps less participatory) court process.[55] Regardless of the cause, notice and pleading documents are likely to shape a tenant's participation in their eviction case more than in other areas of law for four reasons: (1) most landlords are represented and most tenants are unrepresented, (2) landlords often control (at least partially) the flow of information to tenants, (3) hearings may take place as soon as two days after a notice is filed, and (4) these documents are often the only materials that a tenant receives before deciding whether or not to attend court.

The first reason why tenants facing eviction need access to usable information is because they are likely facing a knowledgeable adversary. In housing court, most landlords are represented, while most tenants are not.[56]

---

61 (2020) (finding that "tenants who fell behind [in rent] were unable to summon a building inspector for fear of eviction or withhold rent until repairs are made").

53. Paula A. Franzese, Abbott Gorin & David J. Guzik, *The Implied Warranty of Habitability Lives: Making Real the Promise of Landlord-Tenant Reform*, 69 RUTGERS U. L. REV. 1, 5 (2016).

54. *See* Dyer et al., *supra* note 25 (evaluating the use of plain language forms in family law proceedings).

55. For an example of lawyers and lobbyists flexing their power in Arizona, see *infra* notes 227–30 and accompanying text.

56. Steinberg, *Demand Side Reform*, *supra* note 41, at 750. While national data on evictions is notoriously difficult to obtain, research shows that in many states as many as 90% of landlords are represented, while as many as 90% of tenants are not. *Id.* In Arizona, over 69% of tenants are self-represented. Bernal, *supra* note 10, at 34. In our sample study, 14% of landlords self-represented in housing court. *Id.* at 34 n.68. In contrast, 99.77% of all tenants self-represented. *Id.* In Pima County, for example, there were 13,000 evictions last

Repeat players understand housing laws and their procedural prerequisites. They have a wealth of institutional resources at their disposal—from stock pleading forms to nuanced appellate arguments. Many eviction lawyers are also specialists. In Pima County, for example, three law firms handle almost 65% of all evictions.[57] As a result, these firms likely need to make little investment in preparing each new case.

Attorney compensation structures also incentivize quick evictions. It is a common practice for lawyers to offer to evict tenants at one low flat rate, rather than hourly attorney fees.[58] This payment model aligns the interests of lawyers with landlord-clients, incentivizing lawyers to "kick 'em out quick"—as one popular website recommends.[59] This structure also means that a 17% tenant court attendance rate is not a neutral statistic—it is a business model.[60] When tenants do not show up to court, they *automatically* lose. A lawyer who charges $125 per eviction[61] profits more when a tenant defaults than if the tenant reaches out to negotiate or comes to court to fight.

Notice and pleading documents are part of this business model. Landlords and their lawyers do not have to be bad actors to perpetuate poor document design. They just have to be *rational* actors.[62] Developing effective plain language documents requires significant investment—investment that runs counter to the economic interests of landlords and their

---

year, only 128 in which the tenant was represented. *Id.* This number only includes lawyers who filed a notice of appearance with the court. Some tenants may have received unbundled legal services. *Id.*

57. *Id.* at 34. In our study, the top-evicting landlords had 23%, 25%, and 17% of the market. *Id.* at 34 n.69.

58. *Id.* at 35.

59. KICK 'EM OUT QUICK, https://www.kickemoutquick.com/ (last visited Apr. 10, 2021).

60. Bernal, *supra* note 10, at 35–36. This is the attendance rate for one of the landlords that uses complex pleading forms. *Id.* at 36 n.74. For more on this business model, see *infra* notes 227–30 to see the attorney comments in response to the proposed amendment to the rules of civil procedure.

61. Bernal, *supra* note 10, at 36. This was the going rate in Arizona at the time of the study. Attorney's fees are charged to the tenant and are included in all public documents. *Id.* at 36 n.75.

62. *Id.* at 36. For an example of lawyers' comments, see *infra* notes 227–30 and accompanying text. For a parallel example, see Bill Ibelle, *Allstate Tells Car Crash Victims, 'You Don't Need a Lawyer'*, LAWS. WKLY. USA, Mar. 24, 1997, at B8 (noting study finding that average settlement for claimants without lawyers was $3,262, compared to $11,939 for claimants with legal representation).

lawyers. If archaic notice and pleading forms produce more uncontested evictions and greater profits, what incentive do landlords and their lawyers have to make a change? Moreover, what landlord-focused law firm, unless required, would volunteer to translate court documents into the tenant's primary language, or to detail the steps a tenant should take to bring a counterclaim?

Time pressure is another reason why usable eviction documents are critical to tenant participation. In many states, eviction hearings may be set in as few as two days[63] from the time the eviction action is filed. Tenants, therefore, have little time to understand their situation, assess their options, and respond to the notice. In this expedited timeline, with the psychological and physical threat of eviction ever-present, document usability is critical. So, for example, when materials do not provide a telephone number to call to request translation or a continuance, or when pleading materials refer tenants to a local library with limited hours, timely action becomes more difficult.[64] In contrast, landlords and their lawyers do not experience the same time pressure as tenants.[65] These lawyers often schedule their evictions in a row to lessen the time burden of coming to court.[66] In Arizona, hearings are scheduled roughly five minutes apart, allowing one lawyer to evict a dozen households, or more, per hour.[67]

Time pressure also likely increases the influence of these documents on a tenant's decision to attend the court hearing, and may contribute to the high rates of non-attendance.[68] Rebecca Sandefur finds that tenants often choose

63. Bernal, *supra* note 10, at 35. Two days would generally be for a "material and irreparable breach" violation. *Id.* at 35 n.70. But in places like Arizona, even non-payment hearings are typically set between four to six days of filing. *Id.* And, if a tenant wants to file an Answer or Counterclaim, they are required to file and serve forty-eight hours before the hearing. *Id.*

64. *Id.* at 35. For example, if a tenant receives the notice on Monday to appear on Thursday and is confused about what to do, they will have to go to a library or self-help center on Tuesday, then file and serve the answer on Wednesday and go to court on Thursday—putting everything in the rest of their life on hold. *Id.* at 35 n.71.

65. *Id.* at 35. Even though landlords lose money each day their lawyers wait to serve the notice, they have the option to take as much time as they want to file and may schedule the hearing when it will be convenient for them, or at a time that is inconvenient for the other party. *Id.* at 35 n.72. Therefore, the pleading requirements that limit tenant access to information have no negative effect on the opposing party.

66. *Id.* at 35.

67. *Id.*

68. *Id.* at 37–38. Only 22.79% of all tenants showed up to their eviction hearing in our sample. *Id.* at 37 n.79.

to do nothing in response to their civil justice issues for several reasons.[69] Possible explanations include psychological mindsets (like resignation or a failure to conceptualize a problem as legal), logistical issues (like transportation or childcare), and confusion over the complexity of the process.[70] Access to usable information likely impacts court attendance and participation for the same reasons that individuals fail to take advantage of many goods, according to psychological research: lack of awareness of the consequences of not going to court,[71] costs of understanding the court case,[72] confusion as to available defenses,[73] and stigma and biases that inhibit their pursuit of going to court to advocate for themselves.[74] Because notice and pleading materials are the primary documents tenants receive before making their decision to attend court, the burden falls upon those documents to help tenants overcome these hurdles.

C. Plain Language as Behavioral Nudge

This Article also provides a new comprehensive framework for determining what constitutes accessible and usable court documents. Previous studies have mostly focused on measures to determine a text's

69. Rebecca L. Sandefur, *The Importance of Doing Nothing: Everyday Problems and Responses of Inaction*, *in* TRANSFORMING LIVES: LAW AND SOCIAL PROCESS 112, 126–27 (Pascoe Pleasence, Alexy Buck & Nigel F. Balmer eds., 2007) [hereinafter Sandefur, *The Importance of Doing Nothing*].

70. *Id.*; Rebecca L. Sandefur, *What We Know and Need to Know About the Legal Needs of the Public*, 67 S.C. L. REV. 443, 448–50 (2016).

71. For example, Matthew Desmond found that many individuals did not show up to their court cases because they believed that if they just left the unit, they would not have an eviction on their record. *See* DESMOND, *supra* note 4, at 398–99 n.38.

72. Bernal, *supra* note 10, at 38. The cost of reading such documents is certainly not trivial. In our usability studies, individuals reading the court documents took several minutes, stumbled through the dense language, and often took breaks or gave up. *Id.* at 38 n.82; *see* Janet Currie, *The Take-up of Social Benefits*, *in* PUBLIC POLICY AND THE INCOME DISTRIBUTION 80, 82–83 (Alan J. Auerbach, David Cord & John M. Quigley eds., 2006) (describing that the high transaction costs of learning about, and applying for, social programs may prevent some individuals from applying for benefits).

73. DESMOND, *supra* note 4, at 304.

74. *See* Brigitte C. Madrian, *Applying Insights from Behavioral Economics to Policy Design*, 6 ANN. REV. ECONS. 663 (2014) (describing that psychological biases can lead individuals to make choices that have negative consequences personally and lead to market failures). *But see* Maximilian A. Bulinksi & J.J. Prescott, *Online Case Resolution Systems: Enhancing Access, Fairness, Accuracy, and Efficiency*, 21 MICH. J. RACE & L. 205, 222 (2016) (proposing that "the most quintessential barriers to accessing [the] justice system are . . . physical impediments," not confusion or fear).

readability—defined as the "ease of understanding or comprehension due to the style of writing."[75] While readability is not without its critiques and is likely to produce disparate access for speakers of non-standard Englishes,[76] it is a useful metric because it can be easily quantified.[77] Readability formulas apply a multiple-correlation analysis, which can measure the complexity of semantic and syntactic elements. The various formulas weigh linguistic features differently—such as sentence length or syllables-per-word.[78] Cognitive science shows that increased readability can improve a reader's fluency, enabling readers with less cognitive bandwidth to engage with the text and make decisions.[79]

In practice, plain language is more expansive than readability alone. While some states, like Oregon, have developed comprehensive "plain language" style guides,[80] most states appoint an "Access to Justice Commission" or hire a third-party consulting firm to revise existing

75. WILLIAM H. DUBAY, THE PRINCIPLES OF READABILITY 3 (2004) (quoting GEORGE R. KLARE, THE MEASURE OF READABILITY 1 (1963)).

76. *See, e.g.*, SURESH CANAGARAJAH, TRANSLINGUAL PRACTICE: GLOBAL ENGLISHES AND COSMOPOLITAN RELATIONS 109 (2003).

77. *See* DUBAY, *supra* note 75, at 2–3. For a general discussion regarding the critique of readability formulas, see *id.* at 55–57.

78. For example, the Flesch-Kincaid Readability test generates a "grade-level" by calculating the average sentence length (ASL), the average number of syllables per word (ASW), then multiplying the ASL by 0.39, adding it to the ASW multiplied by 11.8, and subtracting 15.59 from the total. *See The Flesch Grade Level Readability Formula*, READABILITY FORMULAS, https://www.readabilityformulas.com/flesch-grade-level-readability-formula.php (last visited Apr. 10, 2021).

79. Julie A. Baker, *And the Winner Is: How Principles of Cognitive Sciences Resolve the Plain Language Debate*, 80 UMKC L. REV. 287, 295–99 (2011). In cognitive psychology, the role of "fluency" might be framed as which of the two information processing systems our brain is using. The "associative system" compares new stimuli to what we know about the world and often manifests in "quick, automatic reasoning decisions based on inferences." *Id.* at 296. In contrast, the "rule based" system allows for conscious consideration of stimuli in decision-making situations and often manifests in a more deliberate reasoning process. *Id.* When information is fluent, readers are more likely using the associative system; where information is disfluent, readers will be more likely using the "rule based" system. *Id.* at 297. Most psychologists would not argue that there are not two discrete systems in the brain, but rather a host of different systems or modules which tend to separate into two rough categories—mostly associative vs. mostly rule based. While this characterization is an exaggeration, it is arguably a useful one.

80. *See, e.g.*, OR. DEP'T OF CONSUMER & BUS. SERVS., DCBS STYLEBOOK (2013), https://www.oregon.gov/das/Docs/dcbs_stylebook.pdf.

materials.[81] As a result, publications produced by consulting firms that conduct readability consultation and plain language services for state courts have become guiding constellations of best practices to improve usability. These market techniques have even been used in previous academic research on accessibility. For example, a 2015 cognitive linguistics paper analyzing plain language translations of American divorce law relied on the following practical readability techniques:[82]

- Use familiar words and phrasings, i.e., use smaller words and sentences.
- Convert levels of sentence hierarchy into bullet lists, check boxes, etc.
- Create a step-by-step pattern to the document.
- Avoid using too many nouns.
- Eliminate extra words and unnecessary details.
- Use active voice and direct address.
- Avoid foreign words, jargon, and specialized terms. If you must use specialized terms, explain them.
- Match the reading grade level to your audience. The average American's reading grade proficiency is generally considered to be fifth to seventh grade.[83]

---

81. *See, e.g.*, ABA RESOURCE CTR. FOR ACCESS TO JUST. INITIATIVES, ACCESS TO JUSTICE COMMISSIONS MARCH/APRIL 2018 UPDATES 27–28 (2018), https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ATJReports/ls_sclaid_atj_commission_updates.pdf. These commissions often simplify one form at a time—in a slow, laborious process. Commission members may become plain language experts through no particular credentialing other than their passion. In addition, the plain language end product may be a result of compromise between parties with various interests—landlords, lawyers, tenant-advocacy groups—rather than language expertly calibrated to produce action. In my experience, some of these commissions treat plain language like Justice Stewart viewed pornography: they "know it when [they] see it." Jacobellis v. Ohio, 378 U.S. 184, 197 (1964) (Stewart, J., concurring).

82. *See* Dyer et al., *supra* note 25 (reviewing plain language metrics by Transcend Translations, Inc.). There were several articles that foreshadowed this type of analysis. *See, e.g.*, Katherine Alteneder, *Literacy and the Courts*, ALASKA JUST. F., Summer 2007, at 1, 5–8.

83. Charles R. Dyer, *A Cognitive Linguistics Approach to Plain Language Translations of American Divorce Law*, *in* COGNITIVE APPROACHES TO SPECIALIST LANGUAGES 150, 160 (Marcin Grygiel ed. 2017). There are several other metrics which perhaps might be more authoritative, like the SRLN Guide or recommendations of plainlanguage.gov. However, as

This Article compares eviction documents against the above plain language strategies that various disciplines, including law, have decided are the most likely to effectively communicate. It also considers the behavioral design of these documents, including what information is incorporated, how it is visually organized,[84] and whether it is likely to nudge the reader towards any particular action.[85] While many states prohibit landlords from omitting certain information, a surplus of unnecessary information buries content and reduces persistence.[86] Legal self-help often features a surplus of *conceptual* information when only *procedural* information is required.[87] Notice and pleading documents require action; therefore, only the most important and timely information should be provided. As to visual organization, "[l]egibility and format affect reading speed, comprehension, and recall of information";[88] visual depictions improve learning;[89] and

---

the vast majority of courts are outsourcing these plain language revision tasks to third parties, these seem to best reflect what is actually happening on the ground in most courts. These standards are also a bit more actionable than the others. Also, these are the same standards used in the Dyer et al. article. Dyer et al., *supra* note 25, at 1095–96.

84. For a discussion of fluency and its relation to behavior, see Daniel M. Oppenheimer, *The Secret Life of Fluency*, 12 TRENDS COGNITIVE SCI. 237 (2008).

85. *See infra* notes 92–93.

86. In law, content creators wanting to satisfy multiple audiences often tend to be over-inclusive to legally protect themselves. *See, e.g.*, Jon M. Garon, *New Legislation Renews Conflict Between Content Creators and Content Distributors*, BUS. L. TODAY, Dec. 2011, at 1, 3 (discussing over-inclusive statutory language in the context of intellectual property legislation). But that choice itself is likely to harm comprehension.

87. D. James Greiner, Dalie Jimenez & Lois R. Lupica, *Self-Help, Reimagined*, 92 IND. L.J. 1119, 1131–33 (2017). The literature on privacy notices is also relevant. *See generally* George R. Milne, Mary J. Culnan & Henry Greene, *A Longitudinal Assessment of Online Privacy Notice Readability*, 25 J. PUB. POL'Y & MKTG. 238 (2006) (using correlations between readability indexes and notice statistics to illustrate that readers make informed decisions on risk to privacy when they comprehend the privacy notices).

88. Greiner, Jimenez & Lupica, *supra* note 87, at 1134.

89. *See, e.g.*, Russell N. Carney & Joel R. Levin, *Pictorial Illustrations* Still *Improve Students' Learning from Text*, 14 EDUC. PSYCH. REV. 5 (2002) [hereinafter Carney & Levin, *Pictorial Illustrations*]; Russell N. Carney & Joel R. Levin, *Promoting Higher-Order Learning Benefits by Building Lower-Order Mnemonic Connections*, 17 APPLIED COGNITIVE PSYCH. 563 (2003); Prabu David, *News Concreteness and Visual-Verbal Association: Do News Pictures Narrow the Recall Gap Between Concrete and Abstract News?*, 25 HUM. COMM. RES. 180 (1998).

graphics and illustrations can have psychological impacts—motivating and engaging readers, easing anxiety, and improving learning outcomes.[90]

Thaler and Sunstein's work on nudges in behavioral economics theorizes the importance of an actor's psychology on action.[91] A "nudge" is "any aspect of the choice architecture that alters people's behavior in a predictable way without forbidding any options or significantly changing their economic incentives."[92] Consumers respond to a varying range of behavioral nudges, including displaying information about potential benefits and correcting misconceptions about perceived costs.

Legal scholars have just begun to explore the potential of behavioral science interventions to impact litigant action. In the self-help context, Greiner, Jimenez, and Lupica argue for a sea change in paradigm from self-help-as-information to self-help-as-action.[93] They recommend that advocates measure success by user *behavior*.[94] In the context of court document usability, a redesign of the New York City criminal summons leveraged principles of plain language and behavioral theories such as information salience and loss aversion. The redesign reduced nonappearance by 13% and helped to avoid an estimated 23,000 arrest warrants over three years.[95]

If intentional design can encourage court participation, complex notice and pleading documents might discourage it—and might therefore play a role in the high rates of tenant default. The following study provides suggestive evidence confirming this hypothesis.

---

90. *See, e.g.*, W. Howard Levie & Richard Lentz, *Effects of Text Illustrations: A Review of Research*, 30 EDUC. COMM. TECH. 195 (1982); Carney & Levin, *Pictorial Illustrations*, *supra* note 89. In addition, scholarship shows that images should be placed either immediately beside the text they accompany or preceding the text. *See* Roxana Moreno & Richard E. Mayer, *A Learner-Centered Approach to Multimedia Explanations: Deriving Instructional Design Principles from Cognitive Theory*, INTERACTIVE MULTIMEDIA ELEC. J. COMPUTER-ENHANCED LEARNING (Oct. 2000), http://imej.wfu.edu/articles/2000/2/05/index.asp (finding that learning outcomes increase when text and graphics "are physically integrated rather than separated" and when they are "temporally synchronized rather than separated in time").

91. RICHARD H. THALER & CASS R. SUNSTEIN, NUDGE: IMPROVING DECISIONS ABOUT HEALTH, WEALTH, AND HAPPINESS (2008).

92. *Id.* at 6.

93. *See* Greiner, Jimenez & Lupica, *supra* note 87, at 1149–51.

94. *Id.* at 1123–24.

95. Fishbane et al., *supra* note 43, at 682. The study included 323,922 summonses. *Id.* at 684. In accompanying laboratory experiments, people who saw the new forms were able to more accurately identify and more quickly recall court information. *Id.* at 682.

II. The Correlation Between Landlord-Created Eviction Documents and Tenant Default

This Part describes the correlation between the use of court-created pleading documents and tenant default. I analyzed approximately 3,000 cases, the entire population of tenants evicted over the course of three months in Arizona's Pima County Consolidated Justice Court.

Following the deregulation mandated by section 33-361(F) of the Arizona Revised Statutes, Arizona landlords and their lawyers have the choice to use either the forms they have created or the more accessible, bilingual materials created by the judiciary. I evaluated these documents through a binary assignment: whether landlords or their lawyers used their own forms or the court forms.

This examination suggests that the use of court-created pleading materials reduces default. Nevertheless, the methodology has obvious limitations. Most importantly, it is susceptible to confounding and omitted variable bias. Because I predict document use based on landlord law firm, I can't control for the clients, settlement strategies, prestige, capital, or any other law-firm related factor which might be impacting default.[96] My model, therefore, may be confounding the effects of individual law firms with the effects of form use. In addition, while I would argue that the pleading documents used by individual law firms are less accessible than the court-created documents, law-firm created pleading documents are no monolith. Some are long, dense, legalese-filled pleadings that span pages and use the traditional line-by-line numbering system. Most are like the inaccessible documents analyzed in the next Part. Still, a few appear to be more accessible than the court-created documents, although none were bilingual. Despite this variation, the binary assignment provides a metric by which to assess the impact of judicially created documents against lawyer-created documents. The results suggest a strong case for regulation. More and better data is needed, in addition to better techniques to measure legal linguistic complexity, to fully understand the link between document accessibility and court default.

As a methodology, I started with the complete three-month sample—3,032 cases—and removed all cases in which the landlord was represented

96. Such a fixed-effect model would be multicollinear. Bernal, *supra* note 10, at 68 n.127.

by a lawyer who filed less than five cases in the jurisdiction.[97] This resulted in a total of 2,975 cases that were filed by fourteen landlord lawyers or by unrepresented landlords. Then, I analyzed the greater of either twenty-five random cases or all filed cases for each landlord lawyer to verify that lawyers were using the same summons and complaint in all their filings.[98] Next, I noted whether these forms were the court-created pleading documents or documents created by landlords or their lawyers.

In total, 61% of all landlords used pleading documents that they (or their law firm) created, while 39% used court-created documents. Most landlord law firms—twelve out of the fourteen—opted to use their own pleading materials. In contrast, two law firms and all unrepresented landlords used the court-created pleading materials.[99]

The general results are described as follows. Tenant default is negatively correlated with landlord use of court-created pleading documents. That is, when presented with a court-created pleading document, tenants were less likely to default. When controlling for landlord representation, tenant ethnicity, and distance from court, tenants who received court-created pleading documents were 10% less likely to default. The point estimate is statistically significant at the 1% level.[100] Tenant default can be avoided through two separate mechanisms: court attendance and out-of-court voluntary dismissal. Landlord-created pleading documents primarily impacted court attendance, the first mechanism. After controlling for the same variables, tenants who received court-created pleading documents

97. This was purely a practical decision to avoid looking up which pleading documents were used by every lawyer who represented a single case in Pima County. *Id.* at 69 n.128.

98. This search revealed that landlords consistently used the same court pleading materials in all of their cases. It also revealed that notice documents varied widely as they are often created by individual owners and property management companies. Therefore, this Part makes no claim about the real-world impact of linguistic complexity in notices. *Id.* at 69 n.129.

99. As noted in the previous paragraph, because so few lawyers are using the court-created pleading materials, our models may be picking up the effects of facing litigation against these particular law firms. Additionally, one of those law firms filed the vast majority of the evictions. In addition, on the other side, most landlord-created documents were filed by two law firms. *Id.* at 69 n.130.

100. A p-value of 0.05 or less is generally considered "a rough benchmark for statistical significance." *See, e.g.*, D. James Greiner & Cassandra Wolos Pattanayak, *Randomized Evaluation in Legal Assistance: What Difference Does Representation (Offer and Actual Use) Make?,* 121 YALE L.J. 2118, 2155 (2012). For a discussion on p-values and statistical significance for non-specialists, see David H. Kaye & David A. Freedman, *Reference Guide on Statistics*, *in* REFERENCE MANUAL ON SCIENTIFIC EVIDENCE 249–352 (3d ed. 2011).

were 16% more likely to attend their hearing. The point estimate is statistically significant at the 5% level. The results for the second mechanism, voluntary dismissal, are not statistically significant. I investigate these results below.

A. Tenant Default

I define a tenant as having "defaulted" if they neither attended court nor negotiated an out-of-court settlement, as signified by a landlord's filing of a "voluntary dismissal" form. While tenants who default may have attempted (unsuccessfully) to resolve this issue through other channels, the court has no record of them taking action to solve the legal problem. My hypothesis was that tenants who receive court-created documents would be *less likely to default* and, therefore, more likely to choose between either an in-court or out-of-court mechanism to resolve their eviction issue. To properly control for other factors likely to influence the default rate, I ran four different linear probability models (ordinary least squares) where the outcome variable is a dummy indicating whether the tenant defaults.

Model 1 compares the mean rate of default between tenants who received court-created forms and tenants who received landlord-created forms. I found that tenants who received court-created forms were 10% less likely to default. The point estimate is statistically significant at the 5% level.

Model 2 controls for the fact that a large subsection of tenants receiving court-created forms face unrepresented landlords in court. Interviews with tenants in another study showed that having a lawyer's name prominently featured on the summons and complaint changed a tenant's analysis of whether going to court would be a productive use of their time.[101] As explored in detail below, the data support this intuition. More research is needed to better understand the out-sized role that lawyers play in the judicial process of summary eviction. With this control, I found that tenants who received court-created documents were 10% less likely to default. The point estimate is statistically significant at the 1% level.

Model 3 controls for ethnicity, which I include primarily as a proxy for English as a second language. (I made no predictions about other reasons why ethnicity might play a role here.) In particular, it controls for whether at least one defendant listed on the complaint has a surname which GIS data would predict has at least a 50% probability of being Hispanic based on that

101. Bernal, *supra* note 10, at 71.

tenant's census group. I hypothesized that Hispanic tenants would benefit more from bilingual court-created documents, as there is a dearth of self-help materials available in Spanish. Nevertheless, while I found that Hispanic tenants were slightly more likely to default, this result was not statistically significant and did not change the impact of my findings.

Finally, Model 4 controls for distance from the court, which I hypothesized would be negatively correlated with court attendance, as tenants who live farther away from the courtroom might be less likely to attend their hearing. While this control slightly impacted our findings, the result still holds. Model 4, my preferred model, finds that tenants who received court-created materials were 10% less likely to default. The point estimate is statistically significant at the 1% level. The results of these four models are described in the following table:

Impact of Court-Created Pleading Documents on Tenant Default[102]				
	Model 1	Model 2	Model 3	Model 4
Court-Created Forms	-0.0431**	-0.0701***	-0.0702***	-0.0690***
	(0.0185)	(0.0216)	(0.0216)	(0.0216)
Landlord Lawyer		-0.0722**	-0.0723**	-0.0734**
		(0.0299)	(0.0299)	(0.0299)
Hispanic Tenant			0.0108	0.0144
			(0.0182)	(0.0183)
Distance from Court				0.00355
				(0.00237)
Constant	0.612***	0.684***	0.680***	0.665***
	(0.0115)	(0.0320)	(0.0329)	(0.0345)
Observations	2975	2975	2975	2971

Figure 1. Correlation Between Form Use and Default Rates

102. Standard errors in parentheses – * $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$.

B. Court Attendance

The first mechanism by which tenants can avoid default is to attend their eviction hearing. While attendance might be impacted by any number of unobservable factors, I designed the same four models to control for the three most observable factors. Model 1 describes the naked relationship between use of court-created forms and tenant attendance. Tenants who received court-created forms were 37% more likely to attend their eviction case. The point estimate is statistically significant at the 1% level. Model 2 controls for the intuition that tenants may be less likely to attend court if there is a lawyer on the other side of the case. The model verifies this intuition, showing that having a lawyer on the other side significantly pulls in the opposite direction, towards nonappearance. With this control, I found that tenants were still 17% more likely to attend court when given court-created forms. Model 3 controls for whether a tenant is Hispanic, resulting in no change. Model 4, which is my preferred model, controls for distance from the court, revealing that the tenants who received court-created documents were 16% more likely to attend their eviction hearings. The point estimates in these latter models are statistically significant at the 5% level. The table below shows these results.

Impact of Court-Created Documents on Tenant Court Attendance				
	Model 1	Model 2	Model 3	Model 4
Court-Created Forms	0.0743***	0.0473**	0.0473**	0.0457**
	(0.0157)	(0.0184)	(0.0184)	(0.0184)
Landlord Lawyer		-0.0721***	-0.0719***	-0.0711***
		(0.0255)	(0.0255)	(0.0255)
Hispanic Tenant			-0.0149	-0.0184
			(0.0155)	(0.0156)
Distance from Court				-0.00329
				(0.00202)
Constant	0.199***	0.271***	0.277***	0.292***
	(0.00978)	(0.0273)	(0.0280)	(0.0294)
Observations	2975	2975	2975	2971

Figure 2. Correlation Between Form Use and Attendance Rates

C. Voluntary Dismissal

The second mechanism by which tenants can avoid default occurs when a landlord files for a voluntary dismissal prior to—or during—the eviction hearing. In these cases, the judge never actually hears arguments from the landlord or the tenant; the case is dismissed before argument takes place. Because this action always occurs away from court records, I have no way to determine whether the tenants agreed to favorable terms, if they were able to remain in their homes, or if they would have performed better in court. However, a voluntary dismissal rarely signifies *inaction* on the part of the tenant. If a tenant just leaves the home without paying the rent, most landlords will still push through the eviction action, especially if the tenant doesn't attend court.[103] Moreover, a voluntary dismissal means that the tenant does not *legally* owe the landlord any money and will not have an eviction judgment on their record.

The models are designed as follows. Model 1 shows the correlation between the use of court-created forms and voluntary dismissal. This model shows a negative correlation, meaning that tenants who received court-created documents were less likely to secure a voluntary dismissal. This effect, however, is likely confounded with the impact of unrepresented landlords, who constitute a large portion of the court-created sample. I find that cases were three times more likely to end in voluntary dismissal if landlords were represented. The point estimate is statistically significant at the 5% level. This may occur for any number of reasons.[104] However, the most obvious is that unrepresented landlords may not understand that they can file a voluntary dismissal form. Model 2 controls for this lawyer effect. It finds a small, not statistically significant, 2% positive correlation between use of court-created documents and voluntary dismissal. As a reminder, Model 3 controls for tenant ethnicity and Model 4 controls for distance from court. We see little impact from these final models, and the results remain statistically insignificant, as shown below.

103. Bernal, *supra* note 10, at 74.

104. Some reasons may include the following: Lawyers may counsel their clients to settle. Tenants may be intimidated into settling. Or tenants may decide that going to court just is not worth it if they have to face a lawyer on the other side. *Id.* at 74 n.133.

Impact of Court-Created Documents on Voluntary Dismissal				
	Model 1	Model 2	Model 3	Model 4
Court-Created Forms	-0.0312**	0.0229	0.0229	0.0233
	(0.0144)	(0.0167)	(0.0167)	(0.0167)
Landlord Lawyer		0.144***	0.144***	0.145***
		(0.0231)	(0.0231)	(0.0231)
Hispanic Tenant			0.00413	0.00403
			(0.0141)	(0.0142)
Distance from Court				-0.000260
				(0.00183)
Constant	0.189***	0.0446*	0.0429*	0.0434
	(0.00892)	(0.0247)	(0.0254)	(0.0266)
Observations	2975	2975	2975	2971

Figure 3. Correlation Between Form Use and Settlement Rates

D. Study Conclusions and Limitations

While this study is vulnerable to confounding and omitted variable bias, it does demonstrate a statistically significant correlation between the use of court-created pleading documents and tenant default. Moreover, it suggests that tenants who received court-created pleading materials were 16% more likely to attend their hearing. If this correlation holds for the 13,000 evictions which occur in Pima County throughout the year, it would suggest that mandated use of court-approved pleading documents would result in the increased attendance by over ninety tenants per year. If this trend holds for the over 60,000 tenants who are evicted in the state of Arizona each year, this analysis would suggest that state-wide use of court-created pleading forms might result in increased case participation by almost 400 tenants per year.

This study suggests the need for more and better research in two areas. First, researchers need to develop better linguistic methodologies to assess the linguistic complexity of notice and pleading documents. With these methodologies, we can conduct a much more thorough analysis of how increases in complexity are likely to trigger increases in default. Second, the external validity of this dataset needs to be validated by a richer dataset

in which the effects of few landlord law firms are not confounded with linguistic complexity. In short, this study hopes to spark additional research as to how court documents shape the experiences and opportunities of litigants.

III. The Usability of Landlord-Created Court Documents

As one way of explaining the previous results, this Part compares the most commonly filed[105] landlord-created eviction court documents with best practices in readability and plain language. I begin by describing some context, including the order in which the documents are received. Then, I assess each document's performance against the following usability metrics: matching the reading grade level to the audience; including appropriate, actionable information; avoiding specialized or archaic terms; using active voice and direct address; reducing sentence complexity; and prominently featuring behavioral nudges. To supplement this analysis, as "plain language is defined by results,"[106] I also present data from a usability survey conducted with 100 formerly evicted Arizona tenants.[107]

A. Contextualizing the Documents

Generally, every evicted tenant receives at least four documents throughout the creation and termination of their tenancy. The first document, the lease, is a standard contract of adhesion[108] designed to

105. This landlord lawyer filed 26% of all eviction filings in our study. In addition, the firm boasts of having completed 85,000 evictions to date. From a brief analysis of the forms used by the other two major law firms (who respectively filed 23% and 17% of all cases), it is likely the second-most inaccessible and therefore also serves as a useful baseline for an average inaccessible pleading form used by landlord lawyers. *Id.* at 38–39 & nn.85–86.

106. *SRLN Brief: Plain Language Resources for 100% Access*, *supra* note 42.

107. I recruited visitors to the premier self-help website in Arizona, AZLawHelp.org, selected those who self-reported having past eviction experience, and asked them to read the court documents shown here. For each document, tenants rated how much of the document could be read and understood, and whether it was visually accessible. Bernal, *supra* note 10, at 39–40 (survey instruments and results on file with author).

108. *See* Steven Louis Saxe, *Contracts of Adhesion Under California Law*, 1 U.S.F. L. REV. 306, 306 (1967) ("[A] contract of adhesion is simply a contract which is drafted by the party of superior bargaining power and is used exclusively in all dealings with the product or service he offers. The contract is printed in great numbers, and the agent with whom the weaker party deals has little or no authority to alter the printed terms of the 'bargain.'"); *see also* Steven A. Arbittier, *The Form 50 Lease: Judicial Treatment of an Adhesion Contract,* 111 U. PA. L. REV. 1197 (1963).

anticipate litigation,[109] highlight tenant duties, and, often, to omit or obfuscate tenant rights.[110] Empirical studies have shown leases to be discriminatory against tenants.[111] This discrimination primarily results from unequal bargaining power,[112] but may partially result from poor document usability. While this Part focuses on notice and pleading documents, I also analyzed the usability of one standard lease.[113]

If a tenant violates the lease, he receives a notice informing him that this violation may result in eviction.[114] These notices all have statutorily defined times—e.g., five-day or ten-day—in which the tenant is able to "cure the breach" to avoid eviction.[115] If the tenant does not, the landlord can file for eviction with the court and then serve the tenant with two documents—the summons, indicating that the tenant has a court date, and the complaint, specifying the reasons for the eviction.[116] The Arizona Supreme Court also requires that a "Residential Eviction Information Sheet" (REIS) be served alongside these documents.[117] With some exceptions, the hearing is required to take place between three and six days from the date of the

109. Dyer, *supra* note 83, at 155 ("These contracts are written by lawyers specifically in order to make an eventual lawsuit result in favor of the more powerful entity.").

110. Curtis J. Berger, *Hard Leases Make Bad Law*, 74 COLUM. L. REV. 791, 835 (1974) ("The leases almost all treat the residential tenant as a latter-day serf. One sees a near-pathological concern with tenant duties and landlord remedies, occupying from 50 to 80 percent of virtually every form. Much of the remaining text seeks to immunize the landlord against the claims of his tenant. One looks vainly for any recognition of the fact that the tenant may have remedies or the landlord duties."); Warren Mueller, *Residential Tenants and Their Leases: An Empirical Study*, 69 MICH. L. REV. 247, 248 (1970). Mueller's article presents a study of how tenants actually behave with regard to their leases. Mueller reports that about half of the tenants surveyed carefully read their leases, although with widely varying degrees of understanding. *Id.* at 256. Few tenants attempted to negotiate lease terms; yet those who did enjoyed some success. *Id.* at 264–70. Mueller notes that when the data, which does reveal some bargaining success, is subjected to close scrutiny, it is evident that the small number of tenants who secured alteration in these terms had only a limited degree of success and are generally persons whose occupational skills make them better equipped than the average person for the bargaining process. *Id.* at 275. Most likely, these persons also had some choice of tenancies.

111. *See* Berger, *supra* note 110, at 815–16.

112. *See* Mueller, *supra* note 110, at 276.

113. *See infra* Figure 9 and accompanying text.

114. Bernal, *supra* note 10, at 40.

115. *Id.*

116. *Id.*

117. I have included the overall analysis of the REIS in the overall accessibility section in the conclusion of this Part. *See infra* Figure 9.

summons.[118] As an example, for a typical nonpayment case, with rent due on the first day of the month, the documents might be received on these dates and in this order:

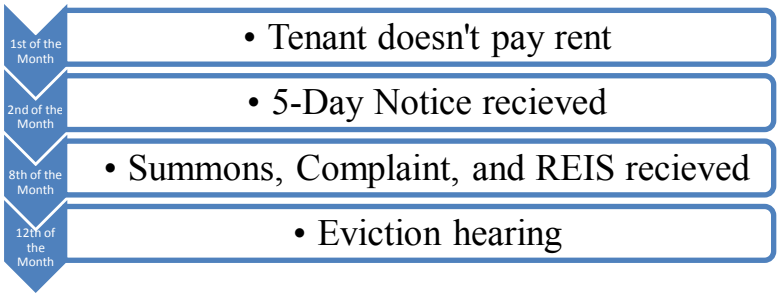


Figure 4. Timeline of Documents Received

B. Five-Day Notice

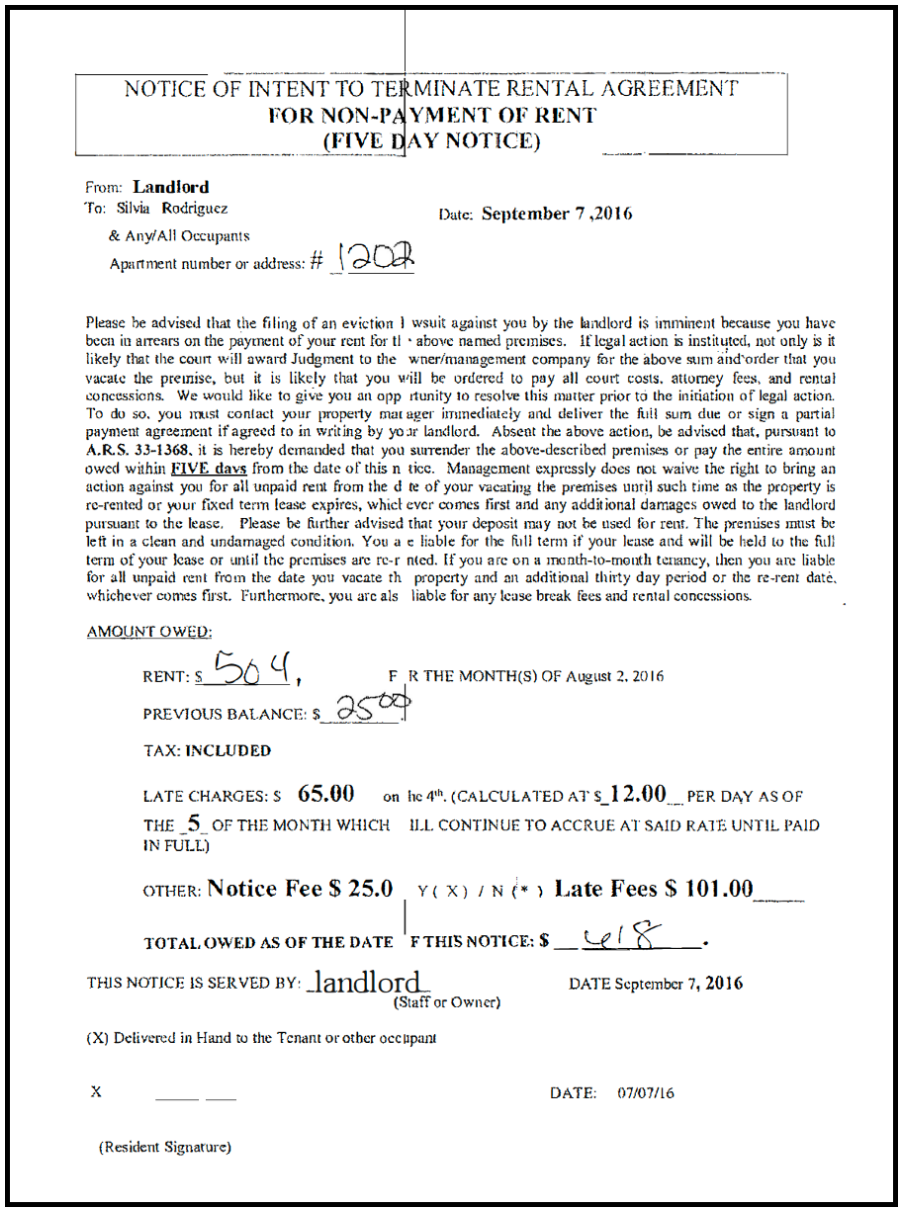
When a landlord alleges that a tenant has breached the lease, the tenant is statutorily entitled to receive a notice.[119] This notice must specify the time a tenant has to cure the breach before an eviction action can be filed.[120] In Arizona, over 90% of tenants facing eviction receive some version of the following Five-Day Notice for non-payment of rent.[121] Because tenants receiving this notice may have the chance to stop the eviction before it begins—and therefore avoid the many consequences of eviction—this document must make clear to tenants their rights and options, and the consequences of inaction.

118. ARIZ. REV. STAT. ANN. § 33-1377(B) (West, Westlaw through 55th Leg., 1st Reg. Sess.).

119. *See id.* § 33-1368(A).

120. *Id.*

121. *See* Bernal, *supra* note 10, at 43–44. As notices are often produced by individual landlords or property management companies and not law firms, there is greater variety among notices in the sample. I analyze a notice that was used frequently by the law firm that filed the most eviction actions in Pima County Consolidated Justice Court.



NOTICE OF INTENT TO TERMINATE RENTAL AGREEMENT
FOR NON-PAYMENT OF RENT
(FIVE DAY NOTICE)

From: **Landlord**
To: Silvia Rodriguez
& Any/All Occupants
Apartment number or address: # 1202

Date: **September 7 ,2016**

Please be advised that the filing of an eviction l wsuit against you by the landlord is imminent because you have been in arrears on the payment of your rent for tl · above named premises. If legal action is instituted, not only is it likely that the court will award Judgment to the wner/management company for the above sum and order that you vacate the premise, but it is likely that you will be ordered to pay all court costs, attorney fees, and rental concessions. We would like to give you an opp rtunity to resolve this matter prior to the initiation of legal action. To do so, you must contact your property mat ager immediately and deliver the full sum due or sign a partial payment agreement if agreed to in writing by yo.r landlord. Absent the above action, be advised that, pursuant to **A.R.S. 33-1368**, it is hereby demanded that you surrender the above-described premises or pay the entire amount owed within **FIVE davs** from the date of this n tice. Management expressly does not waive the right to bring an action against you for all unpaid rent from the d te of your vacating the premises until such time as the property is re-rented or your fixed term lease expires, whicl ever comes first and any additional damages owed to the landlord pursuant to the lease. Please be further advised that your deposit may not be used for rent. The premises must be left in a clean and undamaged condition. You a e liable for the full term if your lease and will be held to the full term of your lease or until the premises are re-r nted. If you are on a month-to-month tenancy, then you are liable for all unpaid rent from the date you vacate th property and an additional thirty day period or the re-rent date, whichever comes first. Furthermore, you are als liable for any lease break fees and rental concessions.

AMOUNT OWED:

RENT: $ 504, F R THE MONTH(S) OF August 2, 2016

PREVIOUS BALANCE: $ 2500

TAX: **INCLUDED**

LATE CHARGES: $ **65.00** on he 4th. (CALCULATED AT $ **12.00** PER DAY AS OF THE 5 OF THE MONTH WHICH LL CONTINUE TO ACCRUE AT SAID RATE UNTIL PAID IN FULL)

OTHER: **Notice Fee $ 25.0** Y (X) / N (*) **Late Fees $ 101.00**

TOTAL OWED AS OF THE DATE F THIS NOTICE: $ 618.

THIS NOTICE IS SERVED BY: landlord (Staff or Owner) DATE September 7, **2016**

(X) Delivered in Hand to the Tenant or other occupant

X _____ DATE: 07/07/16

(Resident Signature)

Figure 5. Five-Day Notice for Non-Payment of Rent

1. Match the Reading Grade Level to Your Audience

This document scores an 11.3 on the Flesch-Kincaid reading level—more difficult than Shakespeare's *Hamlet* and only two grade levels below the Affordable Care Act. As the objective of plain language is to match the reading level of your audience, this notice is almost three times as complicated as the recommended fifth-grade baseline. In addition, studies suggest that tenants facing eviction may have lower education levels than the average American.[122] For example, data from a 2015 American Community Survey suggests that 10% to 40% of residents who lived in the Pima County zip codes with the highest eviction rates did not finish high school.[123]

2. Include Appropriate, Actionable Information

An actionable notice must clearly explain the breach, the steps necessary to cure, the consequences of failing to cure, and the ways to dispute the claim. Here, this notice suffers from both too little and too much information. The title of the notice indicates its purpose—NONPAYMENT OF RENT. However, this is obscured by the preceding language "NOTICE OF INTENT TO TERMINATE RENTAL AGREEMENT." Unfortunately, as educational researchers have noted, the all-caps is actually counterproductive to comprehension—especially where, as here, there are three lines of all-caps text together.[124]

Hidden in sentence four of the block paragraph are the steps necessary to cure the breach—deliver the full sum or sign a partial payment agreement. But to understand this sentence, which begins "To do so," the reader must refer to the previous sentence, which slows the reader down. Then, the reader must search the document to discover the full amount owed. The landlord claims that the tenant owes $618 as of the date of this notice; however, this figure only calculates the late charges as of the fifth of the month. Presumably, the tenant would have incurred an additional $24 by the time he signed the notice on the seventh.[125] The tenant must hunt through dense text to understand how much to pay, and even then the total amount is unclear, as is the partial payment process.

---

122. *See, e.g.*, Ryan Cohen, *Shelter-in-Place: Reducing Displacement and Increasing Inclusion in Gentrifying Neighborhoods*, 13 HARV. L. & POL'Y REV. 273, 290 (2018).

123. *See* Bernal, *supra* note 10, at 46.

124. *See* Greiner, Jimenez & Lupica, *supra* note 87, at 1135.

125. Note that the calculations actually suggest that the total should be $619. *See supra* Figure 5.

The document suggests that eviction is inevitable. It starts with the "notice of intent to terminate rental agreement," indicating the landlord *intends* to terminate the agreement. A filing of an eviction action is *imminent*. Not only is a lawsuit inevitable, the outcome is predetermined:

> If legal action is instituted, not only is it likely that the court will award Judgment to the owner/management company for the above sum and order that you vacate the premise, but it is likely that you will be ordered to pay all court costs, attorney fees, and rental concessions.

The notice suggests that the tenant will lose, and this loss will be significant. Attorneys are expensive. This tone is meant to invoke power, the sense that the law is on the landlord's side. Rather than inciting action, it is paralyzing.

There is no hint how the tenant can dispute the claim, and no option other than "resolv[ing] this matter prior to the initiation of legal action" by contacting the property manager and paying. The court is not described as a place where the tenant will be heard, but where the judgement is likely already predetermined. And, even if the tenant wants to risk going to court, the notice draws attention to the many ways that this choice is likely to cost the tenant much more than they already owe.

3. Avoid Specialized or Archaic Terms

This notice is filled with specialized and archaic terms: arrears, rental concessions, surrender, above-described, premises, vacating, fixed term lease, pursuant, and accrue. Several of these terms could be easily translated into plain language. "You have been in arrears on the payment of your rent" can easily become "You didn't pay rent."

4. Use Active Voice and Direct Address

Passive voice muddies what the landlord has done and what the tenant needs to do. Field tests of plain language court forms reveal that some people are confused about commands given in the passive voice—and do not necessarily assume that the command is directed towards them.[126] Passive voice makes this eviction action feel abstract, out of the tenant's control. It reinforces the tendency towards do-nothing resignation and may contribute to nonappearance.[127]

126. *See* Dyer et al., *supra* note 25, at 1106–07.

127. *See* Sandefur, *The Importance of Doing Nothing*, *supra* note 69, at 126–27.

This notice includes eight instances of passive voice, including the following: "If legal action is instituted . . . ."; "[I]t is hereby demanded . . . ."; and "The premises must be left . . . ." And, when the notice does use direct address, it often addresses the tenant as the subject of negative action, which contributes to the sense of do-nothing resignation: "the filing of a lawsuit against you is imminent"; "it is likely that you will be ordered to pay"; "it is hereby demanded that you surrender"; and "[m]anagement expressly does not waive the right to bring an action against you."[128] There are only four sentences where the tenant is the subject of the sentence, and two of those begin "You are liable." In fact, the only sentence which uses direct address to give the tenant agency is "To do so, you must contact your property manager . . . ." But this sentence is buried within the sixth line of the block paragraph.

5. Reduce Sentence Complexity

Another strategy used in this text is layered sentence complexity. To increase readability, plain language specialists recommend shortening sentences whenever possible. As Greiner, Jimenez, and Lupica note,

> The education literature recommends the use of short sentences. Very short. Perhaps so short that they lack subjects and verbs. Some that are not grammatically correct. Write the way the intended user speaks and thinks. Write as though you are competing for the time and attention of busy and stressed individuals. Because you are.[129]

In contrast, the sentences in the notice average 23.5 words and are filled with dependent clauses that make the reading more difficult.[130]

Take, for example, the first sentence: "Please be advised that the filing of an eviction lawsuit against you by the landlord is imminent because you have been in arrears on the payment of your rent for the above named premises." The matrix clause of this sentence, "please be advised," is

128. At least one example of the direct address does not have a menacing valence: "We would like to give *you* an opportunity to resolve this matter . . . ." *See supra* Figure 5 (emphasis added).

129. Greiner, Jimenez & Lupica, *supra* note 87, at 1135.

130. In total there are four subjectless clausal complements, eight clausal complements, ten adverbial clause modifiers, and seven adjectival clauses. This excerpt was parsed using the Stanford Parser. *Stanford Parser*, STAN. NATURAL LANGUAGE PROCESSING, http://nlp.stanford.edu:8080/parser (last visited Apr. 12, 2021) (data on file with author).

written in passive voice and is followed by an embedded clause which is also written in passive voice: "that the filing . . . is imminent." Within this embedded clause is embedded another clause which states the reason for the passive filing: "because you have been in arrears . . . ." This construction uses the present perfect continuous tense, which cultivates the sense of indefinite inaction. Eight separate preposition-type phrases add to the layered complexity. Also, the sentence includes a phrase, the "above named" premises, which requires the tenant to break their focus on the already-complex sentence to locate external information. This strategy is frequently used in the text to increase the reader's cognitive load.[131] Survey respondents found the sentence to be slightly confusing, very intimidating, and non-neutral.[132]

6. Improve Visual Accessibility

Plain language specialists advocate for visual organization that limits the attention needed to acquire the most important information.[133] But, this notice buries useful information. The title is in all-caps and cluttered, a dense brick of a paragraph weighs everything down, and the bolded and capitalized text in the calculations appears arbitrary and misleading. The photocopy lines and pixelated text—also seen in the original—contribute to the illegibility and historical weight of the document. The penciled-in names and amounts juxtaposed against the stock form signal the immovability of the law and the insignificance of this particular claim. There are no visual aids and no bulleted lists. And, the document reeks of all-caps, which many readers are likely to skip.[134]

131. *See supra* Figure 5 (using phrases such as "[a]bsent the above action," "surrender the above-described," and "[pay] the above sum"). In the final example, the sum is actually located *below* the text, making the visual gymnastics even more complicated. *See supra* Figure 5.

132. On a scale from -2 to 2, the "average agreement for the sentence is intimidating" was 1.38, the "average agreement for the sentence is confusing" is 0.8, and the "average agreement for the sentence contains neutral language" is -.06. Study Data (on file with author).

133. *See* Greiner, Jimenez & Lupica, *supra* note 87, at 1158–60.

134. *See* Ruth Anne Robbins, *Painting with Print: Incorporating Concepts of Typographic Layout and Design into the Text of Legal Writing Documents*, 2 J. ASS'N LEGAL WRITING DIRS. 108, 115–16 (2004).

7. Prominently Feature Behavioral Nudges

In language, there is no neutral ground. While best practice pleading documents encourage court attendance and participation, this document increases the attention needed for the tenant to understand the notice, obfuscates opportunities to cure, highlights the costs of going to court, and forecasts the burden of losing. One particular sentence puts this strategy into stark relief:

> If legal action is instituted, not only is it likely that the court will award Judgment to the owner/management company for the above sum and order that you vacate the premise, but it is likely that you will be ordered to pay all court costs, attorney fees, and rental concessions.

Here, the language suggests that going to court to contest the case is foolish and futile, that the outcome is predetermined, and that the judge will already be on the landlord's side. If a tenant chooses to fight, they will only have to pay additional court costs. Seventy-three percent of survey respondents strongly agreed that this sentence was "intimidating." An additional 10% somewhat agreed.

8. Assess Overall Accessibility

This document fails all standards of readability. It is written over six grade levels above the recommended fifth-grade level, is filled with archaic terminology and legal jargon, and contains complex sentences with layers of dependent clauses that are difficult to parse and require external reference. Visually, the document is uninviting and unnavigable. Psychologically, the passive voice and subversive use of direct address encourage tenant disengagement. Tenants who disagree with the landlord's claim have no easy way of knowing what steps to take next. And, the court appears to already be on the side of the landlord. Tenants should pay or leave.

Survey respondents indicated that, while they would read most of the notice, they would understand little. For example, while 37% said that they would read all of the notice, only 6% thought that they would understand all of the notice. Only 31% thought they would read less than half of the notice, but 81% thought they would understand less than half. This same trend held when asking respondents about the visual accessibility of the notice—whether the information was presented in a way that was visually

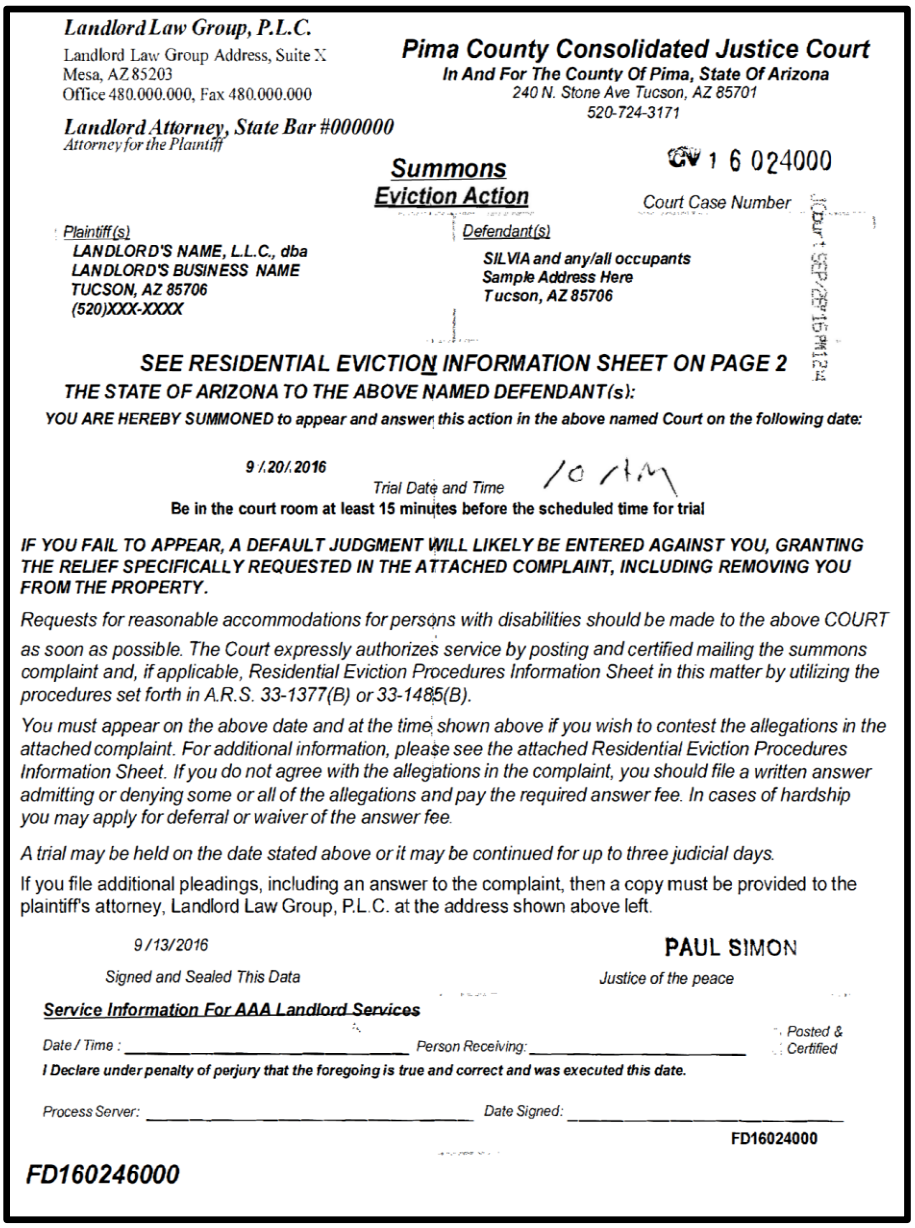
appealing. Almost half of all respondents thought that "very little" or "none" of the notice would be visually accessible.[135]

C. Summons and Complaint

The summons and complaint inform tenants that the landlord has legally filed for eviction. Because they directly precede the hearing, these documents likely have the greatest effect on court attendance and case outcomes. When tenants are served with a summons and complaint, most are still in their residence.[136] But, in the few days between service and hearing, many tenants decide to leave the disputed residence and skip court. Many interventions are unable to reach tenants prior to default. Better pleading forms could help more tenants to identify if participation in their hearing or negotiating with their landlord's lawyer may be beneficial. In contrast, pleading forms could be written to encourage tenant disengagement and default. The summons and complaint included in the following two figures represent the materials used by the landlord law firm that files most often in Pima County:

135. Study Data (on file with author).

136. By law, people are being evicted because they have not either "paid or quit." This would imply that they have not "quit" the residence as of the time of filing. However, in a randomized field experiment that I conducted where we sent self-help mailers to tenants facing eviction, I found that many of our mailers were returned to sender because the house was vacant, indicating that some—if not many—tenants may actually have "quit" the residence before filing. There are no mechanisms by which the court can confirm if this has happened. *See* Bernal, *supra* note 10, at 54 & n.111.



Landlord Law Group, P.L.C.
Landlord Law Group Address, Suite X
Mesa, AZ 85203
Office 480.000.000, Fax 480.000.000

Landlord Attorney, State Bar #000000
Attorney for the Plaintiff

Pima County Consolidated Justice Court
In And For The County Of Pima, State Of Arizona
240 N. Stone Ave Tucson, AZ 85701
520-724-3171

Summons
Eviction Action

CV 1 6 024000
Court Case Number

Plaintiff(s)
LANDLORD'S NAME, L.L.C., dba
LANDLORD'S BUSINESS NAME
TUCSON, AZ 85706
(520)XXX-XXXX

Defendant(s)
SILVIA and any/all occupants
Sample Address Here
Tucson, AZ 85706

Clerk SEP 28 '16 PM 12:24

SEE RESIDENTIAL EVICTION INFORMATION SHEET ON PAGE 2

THE STATE OF ARIZONA TO THE ABOVE NAMED DEFENDANT(s):

YOU ARE HEREBY SUMMONED to appear and answer this action in the above named Court on the following date:

9/20/2016 10 AM
Trial Date and Time

Be in the court room at least 15 minutes before the scheduled time for trial

IF YOU FAIL TO APPEAR, A DEFAULT JUDGMENT WILL LIKELY BE ENTERED AGAINST YOU, GRANTING THE RELIEF SPECIFICALLY REQUESTED IN THE ATTACHED COMPLAINT, INCLUDING REMOVING YOU FROM THE PROPERTY.

Requests for reasonable accommodations for persons with disabilities should be made to the above COURT as soon as possible. The Court expressly authorizes service by posting and certified mailing the summons complaint and, if applicable, Residential Eviction Procedures Information Sheet in this matter by utilizing the procedures set forth in A.R.S. 33-1377(B) or 33-1485(B).

You must appear on the above date and at the time shown above if you wish to contest the allegations in the attached complaint. For additional information, please see the attached Residential Eviction Procedures Information Sheet. If you do not agree with the allegations in the complaint, you should file a written answer admitting or denying some or all of the allegations and pay the required answer fee. In cases of hardship you may apply for deferral or waiver of the answer fee.

A trial may be held on the date stated above or it may be continued for up to three judicial days.

If you file additional pleadings, including an answer to the complaint, then a copy must be provided to the plaintiff's attorney, Landlord Law Group, P.L.C. at the address shown above left.

9/13/2016
Signed and Sealed This Data

PAUL SIMON
Justice of the peace

Service Information For AAA Landlord Services

Date / Time : _____ Person Receiving: _____ Posted & Certified

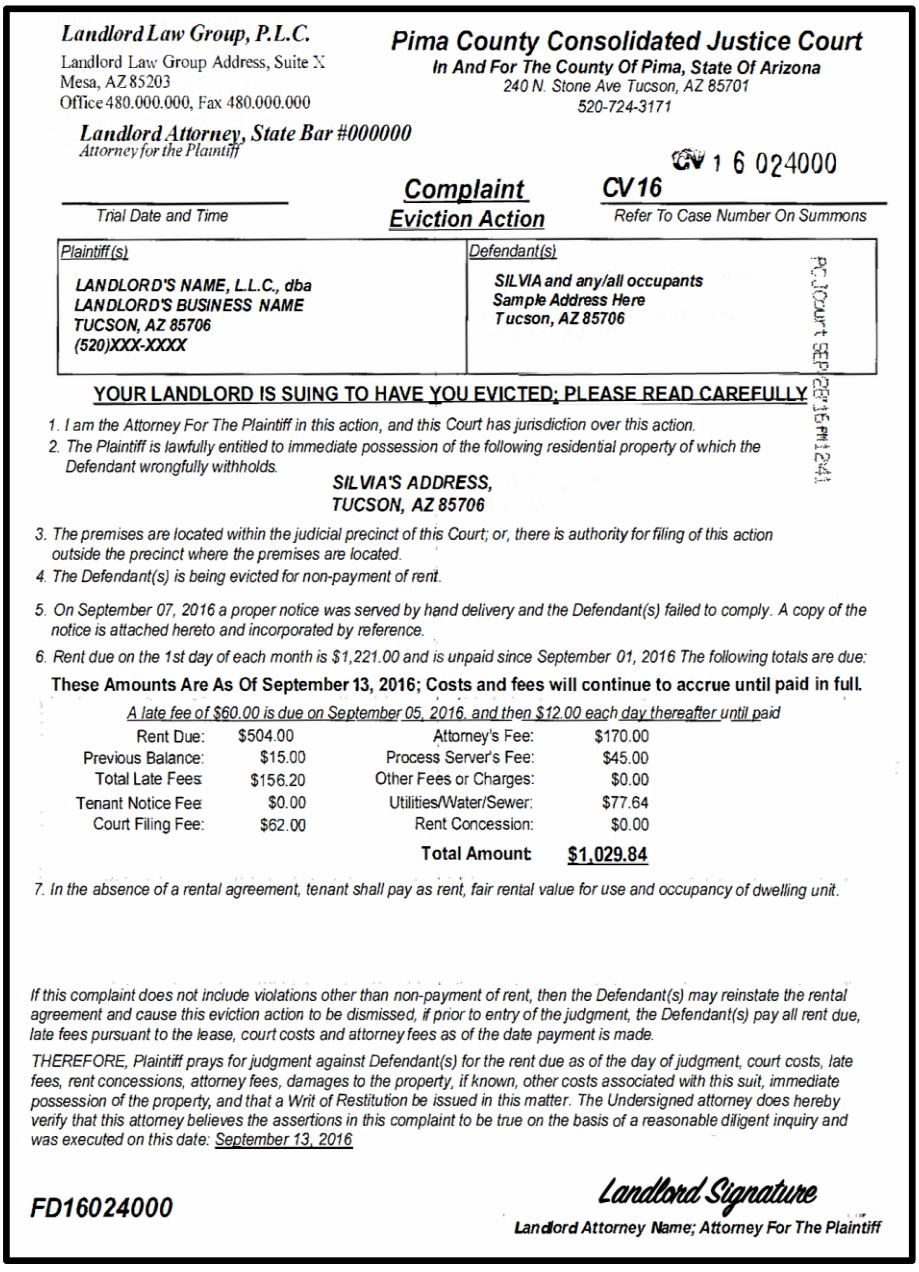
I Declare under penalty of perjury that the foregoing is true and correct and was executed this date.

Process Server: _____ Date Signed: _____

FD16024000

FD160246000

Figure 6. Eviction Summons



Landlord Law Group, P.L.C.
Landlord Law Group Address, Suite X
Mesa, AZ 85203
Office 480.000.000, Fax 480.000.000

Landlord Attorney, State Bar #000000
Attorney for the Plaintiff

Pima County Consolidated Justice Court
In And For The County Of Pima, State Of Arizona
240 N. Stone Ave Tucson, AZ 85701
520-724-3171

CV 16 024000

Trial Date and Time

Complaint
Eviction Action

CV16
Refer To Case Number On Summons

Plaintiff(s)	*Defendant(s)*
LANDLORD'S NAME, L.L.C., dba ***LANDLORD'S BUSINESS NAME*** ***TUCSON, AZ 85706*** ***(520)XXX-XXXX***	***SILVIA and any/all occupants*** ***Sample Address Here*** ***Tucson, AZ 85706***

PC JCourt SEP 28 16 PM 12:41

YOUR LANDLORD IS SUING TO HAVE YOU EVICTED; PLEASE READ CAREFULLY

1. *I am the Attorney For The Plaintiff in this action, and this Court has jurisdiction over this action.*
2. *The Plaintiff is lawfully entitled to immediate possession of the following residential property of which the Defendant wrongfully withholds.*

SILVIA'S ADDRESS,
TUCSON, AZ 85706

3. *The premises are located within the judicial precinct of this Court; or, there is authority for filing of this action outside the precinct where the premises are located.*
4. *The Defendant(s) is being evicted for non-payment of rent.*
5. *On September 07, 2016 a proper notice was served by hand delivery and the Defendant(s) failed to comply. A copy of the notice is attached hereto and incorporated by reference.*
6. *Rent due on the 1st day of each month is $1,221.00 and is unpaid since September 01, 2016 The following totals are due:*

These Amounts Are As Of September 13, 2016; Costs and fees will continue to accrue until paid in full.

A late fee of $60.00 is due on September 05, 2016, and then $12.00 each day thereafter until paid

Rent Due:	$504.00	Attorney's Fee:	$170.00
Previous Balance:	$15.00	Process Server's Fee:	$45.00
Total Late Fees:	$156.20	Other Fees or Charges:	$0.00
Tenant Notice Fee:	$0.00	Utilities/Water/Sewer:	$77.64
Court Filing Fee:	$62.00	Rent Concession:	$0.00
		Total Amount:	**$1,029.84**

7. *In the absence of a rental agreement, tenant shall pay as rent, fair rental value for use and occupancy of dwelling unit.*

If this complaint does not include violations other than non-payment of rent, then the Defendant(s) may reinstate the rental agreement and cause this eviction action to be dismissed, if prior to entry of the judgment, the Defendant(s) pay all rent due, late fees pursuant to the lease, court costs and attorney fees as of the date payment is made.

THEREFORE, Plaintiff prays for judgment against Defendant(s) for the rent due as of the day of judgment, court costs, late fees, rent concessions, attorney fees, damages to the property, if known, other costs associated with this suit, immediate possession of the property, and that a Writ of Restitution be issued in this matter. The Undersigned attorney does hereby verify that this attorney believes the assertions in this complaint to be true on the basis of a reasonable diligent inquiry and was executed on this date: September 13, 2016

FD16024000

Landlord Signature
Landlord Attorney Name; Attorney For The Plaintiff

Figure 7. Eviction Complaint

1. Match the Reading Grade Level to Your Audience

Compared to the lease and the notice, the summons and complaint are more accessible, but still several grade levels above plain language recommendations. Together, the summons and complaint score a 9.2 on the Flesh-Kincaid level. This text, however, should come under heightened scrutiny because of the complicated action tenants need to take in response. While a notice requires only payment or vacancy, a summons and complaint require preparation for court.

2. Include Appropriate, Actionable Information

An effective summons must inform the tenant where, when, and why they are being summoned, and describe the consequences of missing court and the benefits of attendance. This document contains most of this information, but it is not entirely clear. A date and time are thinly scribbled in the middle of the paper and the tenant is told to arrive at least fifteen minutes early. The specific courtroom is omitted, as is any information about how to locate it upon arrival. This summons does not clearly identify the location of the courthouse, referring to it only as the "above named Court." Even after finding the courthouse, it may take tenants another fifteen to thirty minutes to get through security and find their courtroom. But, tenants who arrive even a minute late may default and lose their case.[137] And, if a reader wants to know why they are being summoned, they must to refer to point four of page two.

The summons is not actionable. For example, while the document advises tenants that "Requests for reasonable accommodations . . . should be made to the above COURT as soon as possible," there is no guidance on how to make the request, and the passive voice makes it less likely that the reader will actually make the request.[138] The summons contains no Spanish or any indication that tenants have a statutory right to request a translator.[139] In the second clause of the third sentence of the third paragraph, the tenant is instructed to "file a written answer admitting or denying some or all of the allegations and pay the required answer fee." But there is no indication

137. During our court observations, we witnessed cases called from fifteen minutes to an hour early. The system runs on default; tenants are expected not to show up. When they come, the court begrudgingly adjusts.

138. *See supra* Figure 6. There is a phone number for the court in the upper right-hand corner and an address, but if the tenant does contact the court, they will find that there are several steps to request an accommodation.

139. *See* Ariz. Sup. Ct. Cnty. of Pima Admin. Order, 2017-02 (Jan. 10, 2017).

how the tenant can file an answer, what is required in the answer, and how much it costs. There is also no indication that a tenant can serve the answer at the hearing (or make an oral answer at that time), or that the court almost always waives the fee for residential evictions. And, there is no instruction about what the tenant should do if they are unable to attend the scheduled hearing. Legally, a tenant can request a continuance, but the only mention of this is buried in the passive voice: "A trial . . . may be continued for up to three judicial days."[140]

These documents feature legalese and omit usable information. For example, the summons reads, "The Court expressly authorizes service by posting and certified mailing the summons complaint and, if applicable, Residential Eviction Procedures Information sheet in this matter by utilizing the procedures set forth in A.R.S. 33-1377(B) or 33-1485(B)." This information is of no value to the defendant, but comes before information that is useful—and therefore may cause tenants to disengage prior to reaching that other valuable information. Of the seven points outlined in the complaint, only three are useful to the tenant. The complaint ends with two stock paragraphs filled with dense legalese, some of which is required by court rule.[141]

While the summons notes the consequences of not showing up to court, it does so in a way that is largely inaccessible. The text reads,

> IF YOU FAIL TO APPEAR, A DEFAULT JUDGMENT WILL LIKELY BE ENTERED AGAINST YOU, GRANTING THE RELIEF SPECIFICALLY REQUESTED IN THE ATTACHED COMPLAINT, INCLUDING REMOVING YOU FROM THE PROPERTY.

Did you skim that text? Most people do.[142] Even if the tenant does not, specialized terms require extra attention. A default judgment may not sound bad, the "relief specifically requested in the attached complaint" is one page away, and a tenant may not consider removal from the property problematic if planning on leaving anyway. Matthew Desmond found that many tenants do not show up to court because they believed a fundamental misconception: if they just leave their house, their landlord will dismiss

140. Several practitioners noted to me that, practically, a continuance is rarely granted, and posited that, for this reason, it should not be pushed in the summons. *See* Research Notes (on file with author).

141. *See* ARIZ. R. P. EVICTION ACTIONS 5(b), AZ ST EVICTION Rule 5 (Westlaw).

142. Robbins, *supra* note 134, at 115–16.

their case.[143] But tenants who skip court can automatically lose, and the amount owed may be sent to debt collectors. Tenants may also lose their ability to have federally subsidized housing and may have a harder time finding housing. Such potential consequences are not clearly described, and there is no mention of any possible benefit of coming to court. The negative and abstract framing nudges tenants further away from participating in the judicial process.

3. Avoid Specialized or Archaic Terms

Many of the specialized words found in this summons can be rewritten more accessibly. For example, "allegations" can become "statements," and "admitting or denying" can become "agree or disagree." Other terms are unnecessarily confusing. Does "three judicial days" refer to "three business days?" Does the phrase "defendant's failure to comply" refer to non-payment of rent?

As in the notice, some of the archaic terminology should be eliminated entirely. The landlord does not need to indicate that the notice "is attached hereto and incorporated by reference," and the "Undersigned attorney" does not need to "hereby verify that this attorney believes the assertions in this complaint to be true on the basis of a reasonably diligent inquiry." The final paragraph has a religious tone: "Therefore, Plaintiff prays for judgment against Defendant(s) for the rent due as of the day of judgment." Indeed, the entire premise of being "summoned to appear" sounds foreign, or almost magical, to non-lawyers. While at one time the phrase was relatively common, over the last two-hundred years, it has become more and more obsolete, as Figure 8 illustrates.

143. DESMOND, *supra* note 4, at 299.

Figure 8. Google Ngrams "Summoned to Appear"[144]

4. Use Active Voice and Direct Address

In the complaint, the only direct address is required by statute: "State in bold print, capitalized, and underlined at the top center of the first page, below the case caption, '**YOUR LANDLORD IS SUING TO HAVE YOU EVICTED. PLEASE READ CAREFULLY.**'"[145] The rest of the complaint refers to the tenant as the "defendant," a connection some readers may miss. In contrast, the summons is almost entirely written in direct address. These tense changes between consecutive documents may increase the cognitive strain on the reader. Most direct addresses are repeated commands to appear: "You are hereby summoned to appear . . . If you fail to appear . . . You must appear." These commands contribute to a sense of urgency and importance, but also add to the negative tone and may cause the reader to disengage, do nothing, and ironically, fail to appear. Passive voice draws attention away from actions that the tenant can legally take to improve their case. Requests "should be made" for accommodations; a trial "may be continued." Consequently, tenants may not be aware that they must take action.

144. GOOGLE BOOKS NGRAM VIEWER, https://books.google.com/ngrams (last visited Apr. 12, 2021).

145. ARIZ. R. P. EVICTION ACTIONS 5(b)(6), AZ ST EVICTION Rule 5 (Westlaw).

5. Reduce Sentence Complexity

While shorter than those in the notice, sentences in the complaint still average 15.4 words. And, the longest sentence, at sixty-two words, is arguably the most important. It reads:

> If this complaint does not include violations other than non-payment of rent, then the Defendant(s) may reinstate the rental agreement and cause this eviction action to be dismissed, if prior to entry of the judgment, the Defendant(s) pay all rent due, late fees pursuant to the lease, court costs and attorney fees as of the date payment is made.

This unnecessarily complex sentence could be reworded as follows: "You can stop this eviction by paying all rent and fees before your hearing." Twenty-one percent of surveyed tenants thought that this sentence meant exactly the opposite of what it meant.[146]

6. Improve Visual Accessibility

These documents are visually overwhelming. There is very little whitespace and the indiscriminate use of bolded, italicized, underlined, and all-caps text creates a sense of urgency and confusion. A third of the words are bolded; another third are italicized. Excess font alterations clutter the page and slow the reader down.[147] Page layout is counterproductive to comprehension. Readers begin at the upper-left hand corner,[148] where they learn that their landlord hired a lawyer, and only get to substantive content after a third of the way down the page.

7. Prominently Feature Behavioral Nudges

The New York revised summons increases court appearance, in part, because it clearly informs the reader why they are receiving the summons and the costs and benefits of coming to court. "To avoid a warrant for your arrest, you must show up to court. At court, you may plead guilty or not guilty."[149] The Arizona eviction summons could similarly encourage tenant-

146. Tenants who missed this question were more likely to have lower levels of education, levels that more closely approximated the levels in the American Community Survey, which suggests that even more tenants may be confused by this statement. *See supra* note 123 and accompanying text; *see also* Survey Data (on file with author).

147. *See* Robbins, *supra* note 134, at 118–19.

148. Dyer et al., *supra* note 25, at 1106.

149. *See* Fishbane et al., *supra* note 43, at 684.

action through loss aversion: "To avoid automatically losing your case, you must come to court. At court, you may tell the judge why you shouldn't be evicted." Tenants could also be nudged to court by correcting common misconceptions that tenants believe about the futility of coming to court. Or, the materials could explain the benefits of coming to court—for example, that tenants are more likely to win their case or negotiate better deals. The documents in our study nudge tenants the other way. They increase the attention needed to understand how to answer the complaint and obfuscate any benefit of attendance. The frequent typographical yelling and passive voice nudges tenants away from action.

8. Assess Overall Accessibility

While the readability scores of these documents are closer to the target, they still are riddled with specialized terminology and complex sentences. In addition, the visual design, passive voice, and indiscriminate typographical emphasis are likely to cause tenant disengagement. Most importantly, the content is not targeted for action. Even if a tenant is able to cut through the dense language and organization of these pleading documents, some of the information that would most encourage participation is missing. Sixty-two percent of respondents thought that they would read all or most of the documents, while only 22% thought they would understand most or all of the documents. Thirty-nine percent thought they would understand "very little." Sixty-four percent thought that only half or less than half of the documents were visually accessible.

D. Overall Accessibility

Language is never neutral. Each lease, notice, and pleading document either nudges tenants towards court or away from it—towards action or resignation. The analyzed eviction materials not only fail to meet plain language standards and best practices in behavioral science, but seem to actively discourage tenants from attending court and meaningfully participating. The following figure describes the summary statistics and analysis of these materials. For completeness, I explored why the Residential Eviction Information Sheet is unlikely to reverse this trend.

Document	Compre-hension Score (Survey)	Flesch-Kincaid Level	Levels Above Standard	Overall Accessibility & Behavioral Assessment
Lease	---/---	10.7	5.7 grades	Designed for litigation, not understanding. Filled with legalese and complex sentences. Terms of lease slanted towards tenant duties and landlord rights. Discourages thorough reading.
5-Day Notice	2.7/5.0	11.3	6.3 grades	Filled with archaic terminology and legal jargon. Sentences feature nesting dependent clauses that cause tenant to refer externally. Visual design and passive voice encourage tenant disengagement.
Summons & Complaint	2.8/5.0	9.2	4.2 grades	Filled with specialized terminology and complex sentences. Visual design, passive voice, and indiscriminate typographical emphasis cause tenant disengagement. Insufficient information for tenants to understand possible defenses. Nudges tenants away from attendance and self-defense.
Eviction Info Sheet	2.98/5.0	9.2	4.2 grades	Insufficient to correct the eviction information gap. Lack of actionable information. Filled with passive voice and bereft of direct address. Not actionable.

Figure 9. Document Summary Overview

Non-English speaking litigants face additional barriers. Failure to translate is one of the most insidious barriers to usability. In Arizona—and other states in which English is the official language[150]—landlords are not

150. *See* Hunter Schwarz, *States Where English Is the Official Language*, WASH. POST (Aug. 12, 2014, 12:32 PM EDT), https://www.washingtonpost.com/blogs/govbeat/wp/2014/08/12/states-where-english-is-the-official-language/?noredirect=on&utm_term=.5c8259575666. Some states, like Illinois, literally designate English as the official language. *Id.* Other states, like Missouri, make what seems like an observation: "The general assembly

required to translate pleading materials unless the rental unit is federally subsidized and Title VI applies.[151] Most Spanish-speaking tenants must navigate the entire eviction process in English. For example, the documents used by the law firm that evicts the most tenants in Pima County does not use any Spanish. And the second most frequent evictor only includes one sentence in Spanish and French notifying tenants that they may request a translator. Moreover, in 400 randomly sampled cases, our study did not come across a single example of a landlord-created summons or complaint in a language other than English.[152] Translation is one of the biggest differences between court-created and firm-created eviction documents. As one judge told a tenant in a case I observed, "I know the documents weren't in Spanish. I can't do anything about that."[153]

While tenants speak many different languages in Pima County, this exclusive use of English particularly prejudices the Hispanic population. Census data suggests that almost 40% of Pima County residents are Hispanic.[154] Twenty-seven percent speak Spanish in their homes, and 8.5% report not speaking English very well.[155] As over 13,000 tenants are evicted in Pima County each year, this data suggest that every year, over 1,000

---

recognizes that English is the most common language used in Missouri and recognizes that fluency in English is necessary for full integration into our common American culture." *Id.* Some states, like Tennessee, go even further than this and require documents to be in English: "All communications and publications, including ballots, produced by governmental entities in Tennessee shall be conducted in English unless the nature of the course would require otherwise." *Id.*

151. 42 U.S.C. § 2000d-4a; *see also Frequently Asked Questions on Legal Requirements to Provide Language Access Services*, MIGRATION POL'Y INST., https://www.migrationpolicy.org/programs/language%C2%A0access-translation-and-interpretation-policies-and-practices/frequently-asked (last visited Apr. 12, 2021).

152. There is an assertion that some landlords include translations as separate documents but that the practice of some court staff is not to scan in these documents and upload them to the file.

153. Observation Notes (Aug. 20, 2018, 10:00 a.m.) (on file with author).

154. *QuickFacts: Pima County, Arizona*, U.S. CENSUS BUREAU, https://www.census.gov/quickfacts/fact/table/pimacountyarizona/LND110210 (last visited Apr. 12, 2021).

155. *See* Pilot Study Data (on file with author). Because data from the 2015 American Community Survey did not differentiate between "other languages spoken at home" and "Spanish spoken at home" and the most recent survey did not have data for several zip codes, our survey relied on data from the 2000 Census. Where 2015 data was available, the percentage of other languages spoken at home was higher in all but one case; therefore, the data provided in this study is likely a conservative estimate.

tenants receive eviction documents they cannot read and that over 3,500 tenants could benefit from also receiving the information in Spanish.[156]

IV. Steps Toward Reform

The problems described in this Article will impact many of the tenants facing eviction over the next few months. This will happen not only in states like Arizona, where legislation limits court action, but also in states that already mandate court-created plain language documents.[157] Eviction court documents must be redesigned to reflect the new tenant protections, litigant considerations, and court procedures that have defined this pandemic.[158] Then, once local jurisdictions have the right materials, they must also have the power to require their use. This authority might come from state legislation, from the inherent powers of the courts, from a constitutional challenge, or even from direct democracy.

A. Model Notice and Pleading Forms

Notice and pleading forms should follow the principles of plain language and be designed to achieve a particular outcome. The *notice* should make a tenant aware of the way in which the tenant has violated the lease, the steps needed to cure, and the consequences of inaction. It should also address available protections, and highlight those actions which need to be taken immediately. The *summons* should encourage court attendance and ensure the tenant understands the costs and benefits of the hearing. It must also clearly describe the format of the hearing—whether physical or virtual—and how the tenant can request technical assistance with attendance. The *complaint* should clearly outline the reason for eviction, how the breach can be cured or contested, and whether any renter protections might apply.

I developed the following prototypes for non-payment of rent in Arizona in collaboration with Margaret Hagan of Stanford's Legal Design Lab.

156. Many of these tenants do make it to court. In 2016, in Pima County Consolidated Justice Court, the court interpreter logged 559 total translation requests for all 13,013 cases—meaning that translation occurred in 4.3% of all eviction cases. Most of these were court appointed because some court staff noticed that they did not understand the proceedings. *See* Study Data (on file with author).

157. *See infra* notes 199–208 and accompanying text (discussing examples of state plain language provisions in California, Colorado, and Washington).

158. *See generally* NAT'L HOUS. L. PROJECT, PROCEDURAL DUE PROCESS CHALLENGES TO EVICTIONS DURING THE COVID-19 PANDEMIC (May 1, 2020), https://www.nhlp.org/wp-content/uploads/procedural-due-process-covid-evictions.pdf.

They iterate on the redesigned notice, summons, and complaint forms developed by the Self Represented Litigants Workgroup, mandated by the Arizona Supreme Court, and blocked by Arizona House Bill 2237.[159] They also pull from the suite of notice and pleading forms produced by the Arizona judiciary in response to the COVID-19 pandemic, which are available for landlords to use, but are not mandated (nor could they be).[160] Unconstrained by political realities, these model forms also reimagine how notice and pleading documents might also connect tenants to social and economic resources.

159. *See* Order Continuing this Matter and Reopening the Petition for Comment, *supra* note 29, at attach.; H.B. 2237, 53rd Leg., 1st Reg. Sess. (Ariz. 2017).

160. *Tenant Checklist: Actions a Tenant Must Take Based on Executive Order 2020-49 (Continued Postponement of Eviction Enforcement Actions)*, ARIZ. SUP. CT., https://webcms.pima.gov/UserFiles/Servers/Server_6/File/Government/JC-GreenValley/Tenant-Checklist-2020.pdf (last visited Apr. 12, 2021); *CARES Act 30-Day Notice for Failure to Pay Rent*, ARIZ. SUP. CT., https://webcms.pima.gov/UserFiles/Servers/Server_6/File/Government/JC-GreenValley/CARES-Act-30-Day-Notice-for-Failure-to-Pay-Rent-2020.pdf (last visited Apr. 12, 2021). The model forms presented in this Article have not been approved or endorsed by the Arizona judiciary.

1. Redesigned Five-Day Notice

5-Day Notice
Notice of Intent to Terminate Lease for Non-Payment of Rent (A.R.S. 33-1368(D))

August 5, 2020

To:
Anne Marie Vallone
4800 E 2th St
Tucson, AZ 87511

From:
Veronica Conilla
4800 2nd St
Tucson, AZ 85711
(520) 747-3772

Dear Anne Marie Vallone,

You owe rent. Pay $1730 by August 10 to avoid eviction.

What happens next?

If you don't pay by 5pm on August 10th, your landlord can file a lawsuit to evict you from your home. This will cost you an extra $200 in attorney and court fees and can have negative impacts on your credit score and make it harder to find housing.

Get legal help or rental assistance before August 10th to avoid eviction on your record.

You may qualify for COVID-19 rental protections. Act now!

Your landlord can still file for eviction even if you qualify for COVID-19 protections. These protections won't stop a judge from deciding who gets the house after rental protections expire or if you owe any money. But they will stop the constable from removing you from your home until the rental protections end. Here's what to do:

1 Apply for rental assistance.

Apply to a government or nonprofit program for rental assistance.

Make a copy of your pending application.

Give this to your landlord or property manager.

2 Document your COVID-19 hardship.

Show your landlord proof that you have a qualifying hardship due to COVID-19.

This may include the loss of a job. Page 2 lists all hardships that qualify.

3 Request a payment plan

Present this hardship documentation to your landlord and request a payment plan.

All this must be in writing. Keep records you can give to a judge.

Need legal help?

Eviction help free online tool: **www.azevictionhelp.org**.

Free legal aid: **www.stepuptojustice.org**

Free legal aid: **www.sazlegalaid.org**

Rent Assistance: **(520) 724-2667**

Scan this QR code for links to legal and financial help.

Page 1 of 2

Figure 10. Model Five-Day Notice, Page 1

5-Day Notice

Notice of Intent to Terminate Lease for Non-Payment of Rent (A.R.S 33-1368(D))

What you owe

Rent:	$1,250.00
Late Fees*:	$60.00
Utilities:	$330.00
Notice Preparation/Service Fee:	$20.00
Other Charges:	-
Total Due:	**$1,660.00***

*Late fees will continue to accrue at $5.00/day

If you disagree with this amount, email or text Veronica Conilla

conilla@vcf.com
(520) 747-3772

Make sure to get any disagreement in writing!

If this case does go to the court, you will want proof.

How do I prove that I have a COVID-19 hardship?

Financial hardships are most often caused by a substantial loss of income resulting from COVID-19. This includes job loss or lay off or reduction in pay. You can also qualify for tenant protections if you have a new child care responsibility or a quarantine order. Here are some ways that you can prove this hardship:

- A letter of employment separation or lay off
- Pay stubs or pay history from January 2020 to present
- Documentation of any unemployment benefits you recieved
- A quarantine order from a doctor or public health authority
- A letter to parents regarding K12 school closure or remote instruction
- Any other documents that show financial hardship due to COVID-19

How this notice was delivered to you

This is important as legal proof that the landlord has followed the correct procedure in giving you this notice.

☐ **Hand-Delivered**
This notice was hand-delivered to Anne Marie Vallone or to a person of reasonable age and discretion residing within the leased home.

Date: _____

Recipient: _____

☐ **Certified or Registered Mail**
This notice was mailed via certified or registered U.S. mail to Anne Marie Vallone at the leased home.

Date: _____

Sender: _____

Page 2 of 2

Figure 11. Model Five-Day Notice, Page 2

The notice is designed to make the tenant aware that rent is unpaid and must be paid within five days to avoid eviction. This is the only document the tenant receives *before* the eviction action is filed and becomes part of the public record[161] and before attorney fees and court costs compound the amount owed. This document, therefore, has the potential to nudge a tenant to action to avoid eviction. To do so, research would suggest that the notice should clearly state the problem[162] and spur loss aversion.[163] In our redesigned notice, we noted some of the consequences of not paying—such as having to pay additional court and attorney costs—as well as the consequences of eviction.[164] To increase the ease of payment, the notice also clearly lists the contact information of the property manager.[165]

Our notice also helps to make tenants understand the concrete steps they need to take to qualify for COVID-19 rental protections—including applying for rental assistance, documenting COVID-19 hardship, and requesting a payment plan.[166] This choice architecture may help to nudge tenants to early action. In addition, our notice clarifies which actions the COVID-19 rental protections stop (the actual removal from the housing unit) and which they do not (the filing of the eviction, a court judgment, and legal debt). In addition, our redesigned notice helps to make tenants aware not only of legal resources that can help, but also of social resources like rental assistance programs.[167] The document also features a chance for the tenant to either scan a QR code or send a text to get additional legal help. The unwillingness or inability of courts and social services to include information like this on the five-day notice is highly problematic. Evictions are expensive for everyone involved, and some tenants may be unaware of how to ask for help at the notice stage—the very point in the process in which intervention would be least costly and most effective.

---

161. In jurisdictions like Arizona, which do not have masking laws, the fact that an eviction action was filed at all may be enough for subsequent landlords to discriminate against the tenant. *See How Long Does an Eviction Stay on Your Record in Arizona*, ARIZ. LEGAL CTR., https://arizonalegalcenter.org/how-long-does-an-eviction-stay-on-your-record-in-arizona/ (last visited Apr. 12, 2021).

162. *See supra* Figure 10.

163. *See supra* Figure 10.

164. *See supra* Figure 10.

165. *See supra* Figure 10.

166. *See supra* Figure 10.

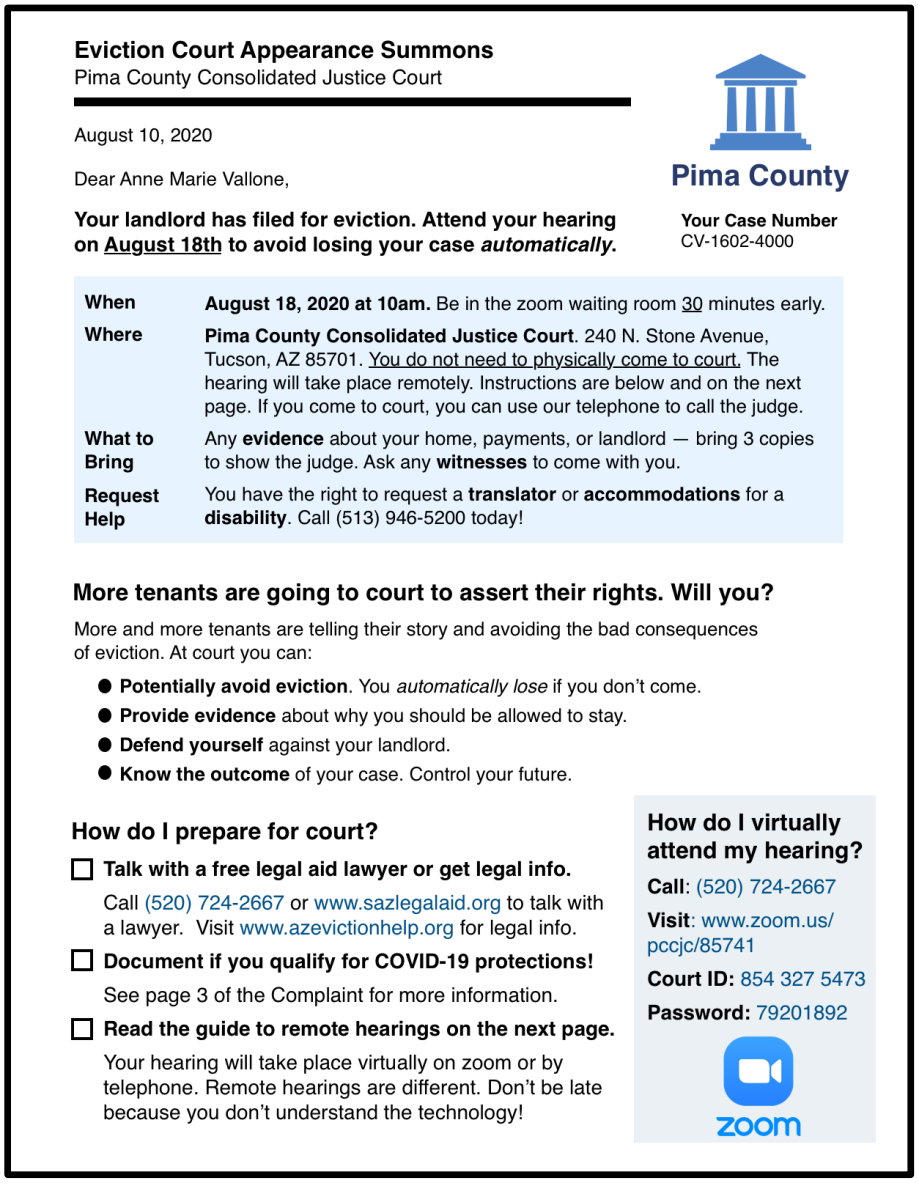
167. *See supra* Figure 10.

The second page of the notice clearly breaks down the money owed.[168] It also provides a clear pathway of what to do if the tenant disagrees with the amount owed.[169] In addition, this page provides more information about what qualifies as a COVID-19 hardship and describes common types of documentation that may help tenants to prove that they qualify for these protections. Finally, the page clearly describes how the notice was delivered, which is statutorily required,[170] so tenants can dispute receiving the form if necessary.

Overall, visual organization of the text split between these two pages reduces the psychological cost of the tenant understanding exactly what is claimed and what to do next, but still allows further investigation.

168. *See supra* Figure 11.
169. *See supra* Figure 11.
170. *See supra* Figure 11.

2. Redesigned Summons



Eviction Court Appearance Summons
Pima County Consolidated Justice Court

August 10, 2020

Dear Anne Marie Vallone,

Your landlord has filed for eviction. Attend your hearing on August 18th to avoid losing your case *automatically*.

Pima County

Your Case Number
CV-1602-4000

When	**August 18, 2020 at 10am.** Be in the zoom waiting room 30 minutes early.
Where	**Pima County Consolidated Justice Court**. 240 N. Stone Avenue, Tucson, AZ 85701. You do not need to physically come to court. The hearing will take place remotely. Instructions are below and on the next page. If you come to court, you can use our telephone to call the judge.
What to Bring	Any **evidence** about your home, payments, or landlord — bring 3 copies to show the judge. Ask any **witnesses** to come with you.
Request Help	You have the right to request a **translator** or **accommodations** for a **disability**. Call (513) 946-5200 today!

More tenants are going to court to assert their rights. Will you?

More and more tenants are telling their story and avoiding the bad consequences of eviction. At court you can:

- **Potentially avoid eviction**. You *automatically lose* if you don't come.
- **Provide evidence** about why you should be allowed to stay.
- **Defend yourself** against your landlord.
- **Know the outcome** of your case. Control your future.

How do I prepare for court?

☐ **Talk with a free legal aid lawyer or get legal info.**
Call (520) 724-2667 or www.sazlegalaid.org to talk with a lawyer. Visit www.azevictionhelp.org for legal info.

☐ **Document if you qualify for COVID-19 protections!**
See page 3 of the Complaint for more information.

☐ **Read the guide to remote hearings on the next page.**
Your hearing will take place virtually on zoom or by telephone. Remote hearings are different. Don't be late because you don't understand the technology!

How do I virtually attend my hearing?

Call: (520) 724-2667

Visit: www.zoom.us/pccjc/85741

Court ID: 854 327 5473

Password: 79201892

zoom

Figure 12. Model Summons

An eviction summons is designed to bring tenants to court. By that metric, it is failing: in Pima County, less than 22% of tenants show up to court.[171] As this Article has demonstrated, this may happen for any number of reasons; however, the summons should be leveraged to counteract at least some of those barriers.

Our redesigned summons primarily leverages two behavioral nudges—risk aversion and dynamic norms.[172] More testing is needed to determine whether these (or other) nudges are effective in the eviction context. For example, further analysis may reveal whether tenants respond more positively to a form that frames potential benefits and highlights ideal outcomes over one that frames the negative consequences of missing court. Previous studies have shown that reminders can nudge clients to court when dealing with chronic issues—like debt collection and warrant resolution;[173] however, research has not found a similar effect in eviction.[174] This may be caused by the unique time pressure and psychological strain of eviction.[175] Only more testing will tell.

Our redesigned summons starts with a clear statement of context, and a command: "Your landlord has filed for eviction. Attend your hearing on August 18th to avoid losing your case *automatically*."[176] This second

171. Study Data (on file with author).

172. Charles A. Holt & Susan K. Laury, *Risk Aversion and Incentive Effects*, 92 AM. ECON. REV. 1644, 1647–53 (2002); Gregg Sparkman & Gregory M. Walton, *Dynamic Norms Promote Sustainable Behavior, Even if It Is Counternormative*, 28 PSYCH. SCI. 1663, 1664 (2017).

173. Dalie Jimenez et al., *Improving the Lives of Individuals in Financial Distress Using a Randomized Control Trial: A Research and Clinic Approach*, 20 GEO. J. POVERTY L. & POL'Y 449, 453 (2013); *see also* Laura Haynes et al., *Collection of Delinquent Fines: An Adaptive Randomized Trial to Assess the Effectiveness of Alternative Text Messages*, 32 J. POL'Y ANALYSIS & MGMT. 718, 718 (2013); J.J. Prescott, *Assessing Access-to-Justice Outreach Strategies*, 174 J. INST. & THEORETICAL ECON. 34, 35 (2018). For a review of many of the studies and strategies that have been shown to reduce failure to appear rates, see generally Daniel Bernal, *Taking the Court to the People: Real-World Solutions for Nonappearance*, 59 ARIZ. L. REV. 547 (2017).

174. *See* Bernal, *supra* note 10, at 136. This randomized field experiment found that tenants who received self-help mailers had no significant observable differences in adjudicatory outcomes. *Id.*

175. This may be because arousal only improves performance up to a certain point. Tenants may already be too overwhelmed for some of the nudges that have been attempted. Robert M. Yerkes & John D. Dodson, *The Relationship of Strength of Stimulus to Rapidity of Habit Formation*, 18 J. COMP. NEUROLOGY & PSYCH. 459, 467–68 (1908).

176. *See supra* Figure 12.

statement triggers loss aversion by linking court attendance with avoiding a bad outcome. We highlight the essentials in a set-apart box—when and where the hearing is, what to bring, and how to request help.[177] All steps are actionable. For example, we prominently feature a telephone number tenants can call to reschedule their case or request a translator or accommodations for a disability.[178]

The summons then leverages dynamic norms, a promising new theory in psychology. While psychologists have long known that people conform to normative information about other people's current attitudes and behaviors,[179] recent studies have suggested that they also conform to *dynamic norms*—information about how other people's behavior is changing over time.[180] This theory is particularly promising in areas like court attendance, where desirable behavior may be counter normative. If a tenant believes (correctly) that most people do not go to court, this belief may act as a justification for nonattendance. Moreover, many tenants have been evicted before and may have skipped their previous hearings. Dynamic norms allow these tenants to act from a clean slate. It is of little import that you didn't go to court in the past—many people didn't. But, now that more people are going, you can too. In addition, our summons connects dynamic norms to potential loss aversion. For example, "More and more tenants are telling their story and avoiding the bad consequences of eviction."[181] By participating, tenants are not only avoiding loss, but can become a part of this new dynamic norm.

Finally, our redesigned summons also helps tenants understand how to prepare for court in the midst of a pandemic in a few key ways. First, this section provides actionable resources for legal and social help.[182] Tenants can pick up the phone to call for rent assistance, request free legal aid, or seek self-help online. Second, it encourages tenants to compile their documentation if they are claiming COVID-19 rental protections. Third, it advises tenants to review the attached guide to understand how to prepare for a remote hearing. Again, this guidance is framed in terms of loss

177. *See supra* Figure 12.

178. *See supra* Figure 12.

179. *See, e.g.*, Robert B. Cialdini, Raymond R. Reno & Carl A. Kallgren, *A Focus Theory of Normative Conduct: Recycling the Concept of Norms to Reduce Littering in Public Places*, 58 J. PERSONALITY & SOC. PSYCH. 1015, 1015 (1990).

180. Sparkman & Walton, *supra* note 172, at 1663.

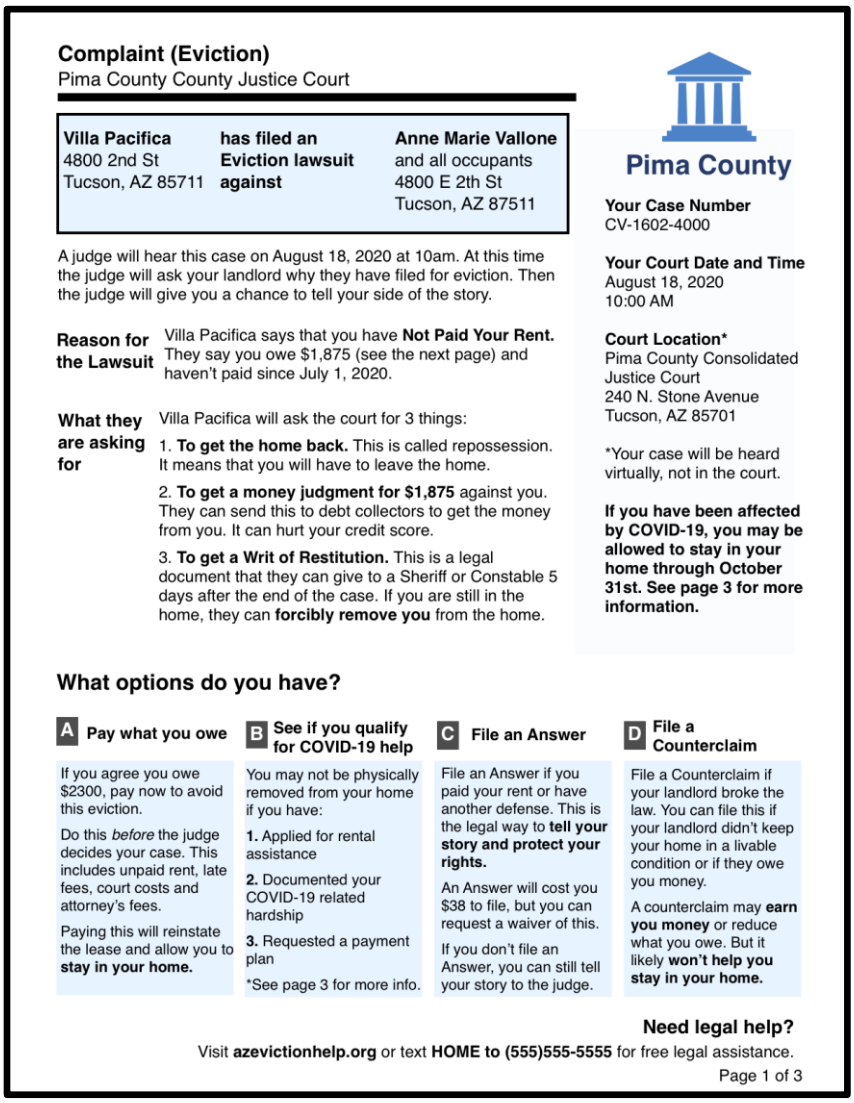
181. *See supra* Figure 12.

182. *See supra* Figure 12.

aversion. Tenants are asked to review this now to avoid defaulting due to a technology error. And, the document also provides quick access to information about the hearing on the bottom right of the page—the last place the reader focuses their attention.[183] Finally, the checkbox design breaks down preparing for court into smaller tasks, inviting tenants to chart their progress.

183. *See* Dyer et al., *supra* note 25, at 1106.

3. Redesigned Complaint



Complaint (Eviction)
Pima County County Justice Court

Villa Pacifica 4800 2nd St Tucson, AZ 85711	**has filed an Eviction lawsuit against**	**Anne Marie Vallone** and all occupants 4800 E 2th St Tucson, AZ 87511

A judge will hear this case on August 18, 2020 at 10am. At this time the judge will ask your landlord why they have filed for eviction. Then the judge will give you a chance to tell your side of the story.

Reason for the Lawsuit Villa Pacifica says that you have **Not Paid Your Rent.** They say you owe $1,875 (see the next page) and haven't paid since July 1, 2020.

What they are asking for Villa Pacifica will ask the court for 3 things:

1. **To get the home back.** This is called repossession. It means that you will have to leave the home.
2. **To get a money judgment for $1,875** against you. They can send this to debt collectors to get the money from you. It can hurt your credit score.
3. **To get a Writ of Restitution.** This is a legal document that they can give to a Sheriff or Constable 5 days after the end of the case. If you are still in the home, they can **forcibly remove you** from the home.

Pima County

Your Case Number
CV-1602-4000

Your Court Date and Time
August 18, 2020
10:00 AM

Court Location*
Pima County Consolidated Justice Court
240 N. Stone Avenue
Tucson, AZ 85701

*Your case will be heard virtually, not in the court.

If you have been affected by COVID-19, you may be allowed to stay in your home through October 31st. See page 3 for more information.

What options do you have?

A Pay what you owe

If you agree you owe $2300, pay now to avoid this eviction.

Do this *before* the judge decides your case. This includes unpaid rent, late fees, court costs and attorney's fees.

Paying this will reinstate the lease and allow you to **stay in your home.**

B See if you qualify for COVID-19 help

You may not be physically removed from your home if you have:

1. Applied for rental assistance

2. Documented your COVID-19 related hardship

3. Requested a payment plan

*See page 3 for more info.

C File an Answer

File an Answer if you paid your rent or have another defense. This is the legal way to **tell your story and protect your rights.**

An Answer will cost you $38 to file, but you can request a waiver of this.

If you don't file an Answer, you can still tell your story to the judge.

D File a Counterclaim

File a Counterclaim if your landlord broke the law. You can file this if your landlord didn't keep your home in a livable condition or if they owe you money.

A counterclaim may **earn you money** or reduce what you owe. But it likely **won't help you stay in your home.**

Need legal help?

Visit **azevictionhelp.org** or text **HOME to (555)555-5555** for free legal assistance.

Page 1 of 3

Figure 13. Model Complaint, Page 1

Complaint (Eviction)
Pima County Consolidated Justice Court

Pima County

What you owe

Rent:	$1,250.00
Late Fees*:	$60.00
Utilities:	$330.00
Notice Preparation/Service Fee:	$20.00
Attorney Fee	$135.00
Court fee:	$80
Total Due:	**$1,875.00***

*Late fees will continue to accrue at $5.00/day

Your Case Number
CV-1602-4000

Your Court Date and Time
August 18, 2020
10:00 AM

Court Location
Pima County Consolidated Justice Court
240 N. Stone Avenue
Tucson, AZ 85701

What to do if you disagree with the amount owed

If you disagree with this total, you should go to court and tell the judge. Bring three copies of all receipts and evidence with you—one for the judge, one for your landlord, and one for you. You also might benefit from filing an Answer.

If you disagree because you spent money on repairs or because your landlord didn't keep your house in a good condition, you may want to file a Counterclaim. Learn more at azevictionhelp.org.

How these legal documents were delivered to you

This is important as legal proof that the landlord has followed the correct procedure in giving you this notice.

☐ **Hand-Delivered**
This notice was hand-delivered to Anne Marie Vallone or to a person of reasonable age and discretion residing within the leased home.

Date: _____

Recipient: _____

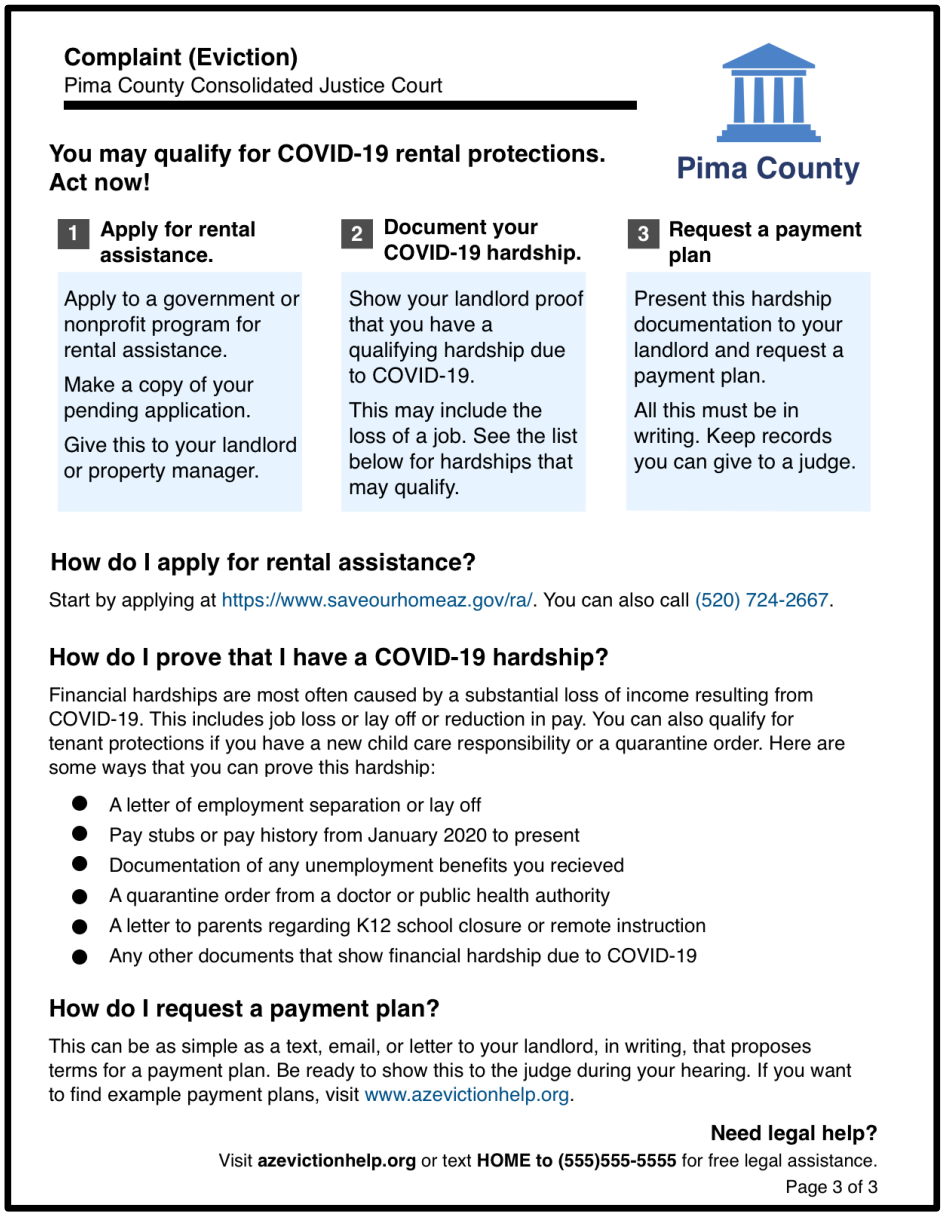
☐ **Certified or Registered Mail**
This notice was mailed via certified or registered U.S. mail to Anne Marie Vallone at the leased home.

Date: _____

Sender: _____

Need legal help?
Visit **azevictionhelp.org** or text **HOME to (555)555-5555** for free legal assistance.
Page 2 of 3

Figure 14. Model Complaint, Page 2



Complaint (Eviction)
Pima County Consolidated Justice Court

Pima County

You may qualify for COVID-19 rental protections. Act now!

1 Apply for rental assistance.

Apply to a government or nonprofit program for rental assistance.

Make a copy of your pending application.

Give this to your landlord or property manager.

2 Document your COVID-19 hardship.

Show your landlord proof that you have a qualifying hardship due to COVID-19.

This may include the loss of a job. See the list below for hardships that may qualify.

3 Request a payment plan

Present this hardship documentation to your landlord and request a payment plan.

All this must be in writing. Keep records you can give to a judge.

How do I apply for rental assistance?

Start by applying at https://www.saveourhomeaz.gov/ra/. You can also call (520) 724-2667.

How do I prove that I have a COVID-19 hardship?

Financial hardships are most often caused by a substantial loss of income resulting from COVID-19. This includes job loss or lay off or reduction in pay. You can also qualify for tenant protections if you have a new child care responsibility or a quarantine order. Here are some ways that you can prove this hardship:

- A letter of employment separation or lay off
- Pay stubs or pay history from January 2020 to present
- Documentation of any unemployment benefits you recieved
- A quarantine order from a doctor or public health authority
- A letter to parents regarding K12 school closure or remote instruction
- Any other documents that show financial hardship due to COVID-19

How do I request a payment plan?

This can be as simple as a text, email, or letter to your landlord, in writing, that proposes terms for a payment plan. Be ready to show this to the judge during your hearing. If you want to find example payment plans, visit www.azevictionhelp.org.

Need legal help?

Visit **azevictionhelp.org** or text **HOME to (555)555-5555** for free legal assistance.

Page 3 of 3

Figure 15. Model Complaint, Page 3

Our complaint begins by redesigning the case caption in an easily understood manner—the landlord has filed an eviction lawsuit against the tenant.[184] Underneath we explain what will happen at the hearing, including that the tenant will have a chance to tell their side of the story. Then, we clearly outline the reason for the lawsuit—failure to pay rent—and list the total amount owed.[185] Next, we overview the three demands the landlord will ask of the court: (1) to get the home back; (2) to get a money judgment for $1,875; and (3) to get a Writ of Restitution.[186] The document explains the consequences of each demand in detail. For example, the money judgment will likely go to a debt collector, which may affect a tenant's credit score.[187] In the text box to the right, the complaint also clearly describes which part of the eviction (the Writ of Restitution) is stopped because of current pandemic protections.

Directly underneath the landlord's claim, the complaint shows four paths forward.[188] First, it describes how the tenant can pay what they owe to avoid eviction—but that they must do so *before* an eviction action is filed. Next, it instructs tenants how to determine if they qualify for COVID-19 renter protections. Then, it explains the two legal documents a tenant may file to make a legal claim—an answer and a counterclaim. This includes some logistics—like the cost of filing—as well some of the substantive reasons why a counterclaim might apply. It also helps to set expectations by letting tenants know that they can still be evicted even if their landlord also broke the law. And, directly underneath, are ways the tenant can seek legal help.

The second page provides a more detailed accounting of the total amount owed, as well as a helpful note for tenants who disagree.[189] It also explains the legally required proof of service.[190]

Page three describes how a tenant can qualify for rental protections. It begins by outlining the three steps required by Arizona law: (1) apply for rental assistance; (2) document COVID-19 hardship; and (3) request a payment plan.[191] Under each step, the complaint provides quick guidance

184. *See supra* Figure 13.
185. *See supra* Figure 13.
186. *See supra* Figure 13.
187. *See supra* Figure 13.
188. *See supra* Figure 13.
189. *See supra* Figure 14.
190. *See supra* Figure 14.
191. *See supra* Figure 15.

before describing how to accomplish each step in more detail. For example, it provides the website and phone number set up by the Arizona Department of Housing as a universal intake for pandemic rental assistance. Then it lists concrete ways for a tenant to document a qualifying COVID-19 hardship. Finally, it provides guidance for tenants to request a payment plan.

As a final note, many court-created complaints in use today are landlord-facing. They use checkboxes to allow the landlord to choose the type of eviction and fill out applicable information. However, the inapplicable junk information on the form imposes extra psychological costs on the reader and may hide the reason for eviction. By streamlining the complaint specifically for non-payment of rent, tenants can more quickly understand exactly how much is owed and how to stop the eviction. Our complaint, on the other hand, is written *for* the tenant. It uses personal pronouns and direct address. It describes how a tenant might respond, and if they might qualify for protections.

The five-day notice, summons, and complaint are not the only eviction documents that require revision.[192] Notices should also be revised for different types of lease violations, along with material and irreparable breach. In jurisdictions where redesign of existing forms is prohibited, supplementary information sheets should be improved to include behavioral nudges. We should have robust data to determine whether these information sheets have any real-world impact or are ignored in favor of the legal documents themselves. We also must redesign the civil minute entry form, which tenants receive after the case—their only physical reminder of the eviction. The civil minute entry form currently reads, "The Court, being fully advised in the premises, finds Plaintiff is entitled to recover by [his/her/their/its] complaint. A Writ of Restitution (Order of Eviction) may be issued on [Date], and is effective immediately upon being served."[193] Tenants I interviewed after their eviction hearings often did not even understand that they had been evicted.[194] The civil minute entry form would

192. The Arizona workgroup redesigned many of these other forms as well. The notices for lease violation were particularly promising as these violations can often be corrected. In contrast, if a tenant does not have the money, they will remain unable to pay rent, despite access to information.

193. Examples on file with Author.

194. *See* Bernal, *supra* note 10, at 11–12 (describing the interview with Diego on March 8, 2019, at Pima County Consolidated Justice Court) ("[W]hich way did it go? . . . I didn't hear a verdict, you know. I didn't hear a decision. Was there a decision? . . . [After reading the civil minute entry] So what does it mean? I think that if I don't have the money on the 13th . . . Or, they ordered the eviction, huh?").

be an ideal time to make tenants aware of what action steps they need to take to minimize the negative impacts of their eviction.

These ideas must be rigorously tested and fine-tuned through co-design with local courts.[195] These redesigns also bring into clear focus some of the larger policy questions. What is the purpose of an eviction hearing—particularly hearings that typically last no longer than twenty seconds? Should all tenants have the right to a hearing—or, as California has decided, should hearings only take place if a tenant has previously filed an Answer? *Should* more tenants be encouraged to come to court? Are those who are not coming self-selecting because they have no defense or are other factors such as linguistic complexity, distance, or the landlord's hiring of an attorney likely to keep out people who would benefit from attendance? Is there value in having a hearing even if the tenant has no defense and will be evicted? How might courts partner with local governments and social services to connect evicted tenants to resources? These questions have implications for the legitimacy of housing court and for perceptions of procedural justice. Form redesign will challenge fundamental assumptions about the judicial process of summary eviction. And, the behavioral impacts of better court documents may drive redesign in other jurisdictions.

B. Model Judicial and Legislative Reforms

Better forms will have no influence if they are not widely used. While many courts provide plain language forms, if use is not mandated, these forms may only be used by self-representing landlords—impacting only a small percentage of tenants. For example, the Iowa Supreme Court requires self-represented landlords to use the court-created forms, but permits lawyers to use their own.[196] The most comprehensive reforms are likely to start in state legislatures. For example, California's Judicial Counsel has authority by legislative mandate to require the use of forms approved by the Counsel by all parties and in all courts.[197] States with less legislative appetite may effectuate change through judicial order or rule change. For example, the Colorado Rules of Civil Procedure require the use of

195. *See generally* Daniel W. Bernal & Margaret D. Hagan, *Redesigning Justice Innovation: A Standardized Methodology,* 16 STAN. J. C.R. & C.L. 335 (2020) (discussing the major principles of designing justice innovations).

196. *See supra* note 26.

197. CAL. GOV'T CODE § 68511 (West, Westlaw through 2021 Reg. Sess.).

standardized plain language forms in an eviction action.[198] This Section briefly describes each of these and borrows model language from states that have already done this well.

1. Legislative Reforms

If a state has the political support for legislative reform, a bill modeled after the measures passed by California might be a good model. In California, the legislature explicitly transferred authority to the Judicial Council to regulate form construction and content.[199] Section 68511 of the California Government Code reads:

> The Judicial Council may prescribe by rule the form and content of forms used in the courts of this state. When any such form has been so prescribed by the Judicial Council, no court may use a different form which has as its aim the same function as that for which the Judicial Council's prescribed form is designed. The Judicial Council shall report periodically to the Legislature any statutory changes needed to achieve uniformity in the forms used in the courts of this state.[200]

Chapter 4 of California's Rules of Court picks up on this delegated power in Rule 1.31(a): "Forms adopted by the Judicial Council for mandatory use are forms prescribed under Government Code section 68511. Wherever applicable, they must be used by all parties and must be accepted for filing by all courts."[201]

Washington is also a good example of delegated legislative authority, although this authority remains underutilized in eviction. The Washington legislature requires mandatory use of some forms—e.g., divorce.[202] It also

198. *See* COLO. R. COUNTY CT. CIV. P. 310, CO ST CTY CT RCP Rule 310 (Westlaw) ("The complaint and answer shall be in the form shown in Appendix to Chapter 25, C.R.C.P. with a caption that conforms with C.R.C.P. 10. The complaint in an action brought pursuant to section 13-40-110, C.R.S., shall also include a demand for possession setting forth all jurisdictional prerequisites necessary for the entry of judgment for possession. . . . The summons shall be in the form and content prescribed by the Appendix to Chapter 25, Forms 1, 1A (for actions brought pursuant to section 13-40-110, C.R.S.) . . . .").

199. CAL. GOV'T CODE § 68511.

200. *Id.*

201. CAL. R. CT. 1.31(a) (providing for the adoption of alternative mandatory forms in some areas, as well).

202. WASH. REV. CODE ANN. § 26.26B.010 (West, Westlaw through 2020 Reg. Sess.); *see also* WASH. REV. CODE ANN. § 26.18.220 (West, Westlaw through 2020 Reg. Sess.)

declares that the Administrative Office of the Courts "has continuing responsibility to develop and revise mandatory forms and format rules as appropriate."[203] While Washington has developed a "plain language" summons for evictions,[204] the state declares as "sufficient" any complaint that states a "description of the property with reasonable certainty, that the defendant is in possession thereof and wrongfully holds the same by reason of failure to pay the agreed rental due, or the monthly rental value of the premises."[205] It even declares that the service of the complaint is sufficient as *notice*—providing less opportunity to give vital information to the tenant.[206]

Other, likely less effective, examples of the use of legislative authority could expand upon the plain language statutes designed for government transparency and consumer contracts.[207] These statutes might require either objective or subjective measures of readability. For example, Connecticut's plain language consumer contract statute outlines both of these tests and requires every contract to meet one or the other.[208] For the subjective test, the law requires the contract to use, among other things, "short sentences and paragraphs . . . everyday words . . . personal pronouns . . . simple and active verb forms . . . [and] type of a readable size."[209] For the objective test, the law requires, in part, the following:

> (1) The average number of words per sentence is less than twenty-two; and

("The administrative office of the courts shall develop . . . standard court forms and format rules for mandatory use by litigants . . . [limiting this duty to discrete areas of law].").

203. WASH. REV. CODE ANN. § 26.18.220.

204. *See* WASH. REV. CODE ANN. § 59.18.365 (West, Westlaw through 2020 Reg. Sess.).

205. WASH. REV. CODE ANN. § 59.08.030 (West, Westlaw through 2020 Reg. Sess.).

206. *Id.* § 59.08.040.

207. *See, e.g.*, CONN. GEN. STAT. ANN. § 42-152 (West, Westlaw through 2020 Reg. Sess.); 73 PA. STAT. AND CONS. STAT. ANN. § 2205 (West, Westlaw through 2020 Reg. Sess.); MICH. COMP. LAWS ANN. §§ 445.901 (West, Westlaw through 2020 Reg. Sess.); *see also* Nick Ciaramitaro, *The Plain English Bills . . . Ten Years Later*, 73 MICH. B.J. 34, 34 (1994) (noting that legislative bills requiring the use of plain language were introduced for consumer contracts as far back as 1979); Carol M. Bast, *Lawyers Should Use Plain Language*, FLA. B.J., Oct. 1995, at 30, 32 ("[S]tate statutes of Connecticut, Hawaii, Maine, Minnesota, Montana, New Jersey, New York, Oregon, Pennsylvania, and West Virginia require that certain types of consumer contracts be written in plain language.").

208. *See* CONN. GEN. STAT. ANN. § 42-152(b)–(c).

209. *Id.* § 42-152(b)(1)–(5).

> (2) No sentence in the contract exceeds fifty words; and
>
> (3) The average number of words per paragraph is less than seventy-five; and
>
> (4) No paragraph in the contract exceeds one hundred fifty words; and
>
> (5) The average number of syllables per word is less than 1.55 . . . .[210]

These consumer contract statutes delegate the responsibility to ensure understanding to the drafter.[211] This makes sense where contracts can take many different shapes and may require an ever-expanding number of new provisions. In contrast, there is little reason why landlords and their lawyers need to retain design control over eviction notice and pleading documents. Here, the courts are likely the party best situated to understand what to include to ensure understanding and increase participation. Explicit delegation of authority to the courts, which already have implicit authority, is likely the best way forward.

2. Judicial Reforms

State supreme courts can also create procedural rules unique to eviction, amend existing rules of civil procedure, or create and delegate authority to a commission on access to justice. The Arizona Supreme Court created the Rules of Procedure for Eviction Actions.[212] Colorado's Rules of Civil Procedure require the use of plain language forms in an eviction action.[213] The Iowa Court Rules require self-represented litigants to use the

---

210. *Id.* § 42-152(c)(1)–(5).

211. This also leaves the legislature with a heavy burden to continually update and maintain the rules to discourage gaming of the system.

212. Order Adopting Rules of Procedure for Eviction Actions, *In re* Petition for Rules of Procedure for Eviction Actions, No. R-07-0023 (Ariz. Dec. 2008), https://www.azcourts.gov/portals/20/2008RulesA/R-07-0023FinalRuleOrder.pdf.

213. *See* COLO. R. COUNTY CT. CIV. P. 310, CO ST CTY CT RCP Rule 310 (Westlaw) ("The complaint and answer shall be in the form shown in Appendix to Chapter 25, C.R.C.P. with a caption that conforms with C.R.C.P. 10. The complaint in an action brought pursuant to section 13-40-110, C.R.S., shall also include a demand for possession setting forth all jurisdictional prerequisites necessary for the entry of judgment for possession. . . . The summons shall be in the form and content prescribed by the Appendix to Chapter 25, Forms 1, 1A (for actions brought pursuant to section 13-40-110, C.R.S.) . . . .").

standardized plain language forms for eviction actions.[214] Illinois Supreme Court Rule 10-101 orders the "Commission on Access to Justice [to] establish a process to develop and approve standardized, legally sufficient forms for areas of law and practice where the Commission determines that there is a high volume of self-represented litigants and that standardized forms will enhance access to justice."[215] Illinois recently released approved statewide eviction forms, and the website provides opportunities for community members to suggest changes.[216]

Arizona Supreme Court Order No. R-16-0040 is useful as a model court rule.[217] With a few changes of my own, I present the following language for other courts to adopt:

Model Rule 1. Mandatory Use of Accessible Eviction Notice and Pleading Forms

(1) Attorneys representing landlords, landlords filing *pro per*, and judges and court staff must use the eviction forms approved by the Administrative Office of the Courts (AOC).

(2) Types of Forms Approved:

  (a) Eviction Action Complaint

  (b) Eviction Action Summons

  (c) Notice for Failure to Pay Rent

  (d) Other notices that are approved by the AOC

(3) Mandatory use of these forms is required to ensure that tenants understand and can exercise their civil and procedural rights, to reduce the number of barriers encountered while using the court system, and to

214. *See supra* note 26.

215. ILL. SUP. CT. R. 10-101(a); *see also* ILL. SUP. CT. COMM'N ON ACCESS TO JUST., ADVANCING ACCESS TO JUSTICE IN ILLINOIS: 2017–2020 STRATEGIC PLAN 20–21 (May 2017), http://www.illinoiscourts.gov/SupremeCourt/Committees/ATJ_Commn/ATJ_Commn_Strategic_Plan.pdf.

216. *See Approved Statewide Forms – Eviction Forms*, ILL. SUP. CT.: STANDARDIZED STATE FORMS, http://illinoiscourts.gov/Forms/approved/eviction/eviction.asp (last visited Apr. 29, 2021).

217. *See* Order Continuing this Matter and Reopening the Petition for Comment, *supra* note 29, at attach.

promote the confidence of the public in the overall judicial system.

(4) The Administrative Director of the AOC has continuing responsibility to test and revise these mandatory forms in response to user feedback, academic research, or changes in state laws or procedures.

(5) In the interest of justice in a particular case, the court may permit use of a form other than the approved form the court finds to be consistent with law as the approved form.[218]

Figure 16. Model Eviction Rule

Other, less effective judicial rules will regulate only content or typography, or require only the inclusion of a supplementary form created by the judiciary.[219] Unfortunately, many of these supplementary materials fail the standards of plain language—showcasing the importance of expert development, rigorous testing, and iterative redesign.[220] More importantly, as this Article demonstrates, content regulations have not done enough to ensure that landlord-created forms will have the same impact as those created by the court. While it is theoretically possible that content-based regulations could be finely tailored to accomplish this end, the burden should lie with the judiciary, not with private third parties, to ensure access to justice. Mandatory form use is the best way to guarantee this right.

---

218. Section 5 of the model rule developed from a variety of different statues, including KRS § 24A.200, KY ST § 24A.200. ("The purpose of KRS 24A.200 to 24A.360 is to improve the administration of justice in small noncriminal cases, and make the judicial system more available and comprehensible to the public; to simplify practice and procedure in the commencement, handling, and trial of such cases in order that plaintiffs may bring actions in their own behalf, and defendants may participate actively in the proceedings rather than default; to provide an efficient and inexpensive forum with the objective of dispensing justice in a speedy manner; and generally to promote the confidence of the public in the overall judicial system by providing a forum for small claims.").

219. Rule 5 requires the landlord to include the Residential Eviction Procedures Information Sheet and requires several disclosures and certain typographical features. *See supra* note 27. *See also* Ariz. Sup. Ct. Admin. Order No. 2020 - 159, *supra* note 23 (requiring an additional informational notice document to be served to tenants during the pandemic).

220. *See supra* note 126 and accompanying text (discussing the tenant's tendency to default when notified with passive language).

Conclusion

If we are to change tenants' experience of eviction for the better, we must change the documents that evict. Without redesign and regulation, these documents keep tenants underinformed and out of court. Amidst a pandemic, the need for this work is even more pressing. Tenants need quick, usable information to understand how to navigate a remote hearing, access tenant protections, and understand what a statewide eviction moratorium really means. Principles of plain language, behavioral science, and human-centered design teach us how to craft notice and pleading materials that are well-tailored to increase understanding and influence action. And, through imagination and testing, these documents might also help to stop eviction actions before they are filed, to build bridges between legal action and social services, and to improve perceptions of procedural justice that are likely to ripple outward.

For all of our existing policies, we ought to ask: who profits and at whose expense?[221] At times, this is abundantly clear. When Arizona Supreme Court Chief Justice Scott Bales proposed mandatory form use in eviction,[222] his proposal was lambasted by local law firms, the Arizona Multihousing Association, the Arizona Association of Realtors, and the Manufactured Housing Communities of Arizona. These organizations saw this proposal as a threat to their business model. For example, the Arizona Association of Realtors ("AAR") argued that imposing a mandatory form would deprive Arizona REALTORS® and their clients of "the right to use established and proven forms that have stood the test of time."[223] While the AAR noted that the court's efforts were "commendable . . . to assist self-represented litigants navigate what can prove to be a challenging process," the organization concluded that it is "unclear why this goal must be achieved at the expense of REALTORS®, their clients, and Arizona attorneys."[224] Other prominent landlord attorneys argued that the proposed amendment "takes a private businesses' source of income away by seizing

221. "Who profits?" is Audre Lorde's question. AUDRE LORDE, SISTER OUTSIDER 114 (rev. ed. 2007).

222. *See* Order Continuing this Matter and Reopening the Petition for Comment, *supra* note 29, at attach.

223. *See* Letter from Scott M. Drucker, Gen. Counsel, Ariz. Ass'n of REALTORS®, to Justices of the Arizona Supreme Court 1 (Sept. 20, 2016), https://www.azcourts.gov/Rules-Forum/aft/625 (scroll down to "20 Sep 2016 02:46 PM" and select Attachment "Comment to Supreme Ct Petition R-16-0049.pdf").

224. *Id.*

the right to create notice forms without compensating it," was "made with no consideration of costs or benefit and is arbitrary and capricious," and "arises out of uninformed stereotypes of the eviction process and landlord attorneys."[225] These attorneys concluded:

> The current practices work well. The system operates efficiently and at minimum expense. The upheavals created by this exercise will slow the process down . . . . [This proposed amendment] may serve someone's idea of justice, but certainly does not serve justice in any sense of the word in the American legal system.[226]

Before the amendment passed in the judiciary, these lobbyists took to the legislature and easily passed House Bill 2237.[227] After House Bill 2237 passed, several landlord attorneys proudly reported their successful resistance of this "attempted power grab," citing the victory as "an important example of why it is so important to support [Manufactured Housing Communities of Arizona] in its legislative efforts."[228] For these landlords, it was worth fighting to maintain exclusive control of the documents that evict.

Courts and states must take action not only to redesign these documents, but to mandate their use. States with the political or judicial will should go beyond mandating plain language versions of existing materials and imagine how new content might enhance court participation. This redesign should be a priority for access to justice commissions and state supreme courts—as eviction is a space where these documents play an outsized role. Then, these materials should be subject to continual testing and redesign based on user feedback and empirical outcomes. Even in states like Arizona, there are still paths forward. Under the general separation of powers doctrine, advocates could challenge section 33-361(F) of the Arizona Revised Statutes as a violation of the Court's inherent authority to regulate what goes on in its boundaries. Post *Turner*, it is possible that litigants could bring a due process argument challenging inaccessible and

225. *See* Comments on Proposed Rule: Notice of Intent to File Response to Petitioners "Reply" at 19, *In re* Petition to Amend the Rules of Procedure for Eviction Actions, No. R-16-0040 (Ariz. Sept. 23, 2016).

226. *Id.* at 18–20.

227. *See* H.B. 2237, 53rd Leg., 1st Reg. Sess. (Ariz. 2017).

228. *See Blog--2017: Michael A. Parnham*, WILLIAMS, ZINMAN & PARNHAM, P.C. (Mar. 25, 2017), https://www.michaelparhamlaw.com/blog--2017.html (entry for March 25, 2017).

unusable notice and pleading materials.[229] In addition, voters in Arizona could pass a referendum.[230] Neither landlords nor legislatures should be responsible for ensuring due process. The court must have authority to safeguard the rights of all those who seek justice.

Ultimately, lasting change requires legislative action. Better court documents cannot change bad laws. Better documents will not overcome the social, psychological, medical, and physical barriers tenants encounter when facing eviction. Better documents won't pay rent. But eviction is not a zero-sum game. Even tenants who do not have cognizable defenses or counterclaims might benefit from exercising their right to be heard. At least they should have their chance. As Justice Marshall wrote, "Our courts were never intended to serve as rubber stamps for landlords seeking to evict their tenants, but rather to see that justice be done before a man is evicted from his home."[231] In the same way, courts must not rubber-stamp eviction notice and pleading documents simply because they contain statutorily required phrasing. They must analyze them. Redesign them. Test them. See that justice be done.

---

229. Could "plain language" pleading materials qualify as a "substitute procedural safeguards" necessary for due process? *See* Turner v. Rogers, 564 U.S. 431, 446 (2011) (quoting Matthews v. Eldridge, 424 U.S. 319, 325 (1976)). For a discussion of the role of *Turner* in the self-help movement, see Steinberg, *Demand Side Reform*, *supra* note 41, at 788–98. While courts have not accepted the due process arguments in many other contexts, bringing additional research such as the findings of this Article, might cause courts to rethink this issue. Procedural due process requires notice, and courts have found that unintelligible documents do not constitute adequate notice. Courts have also found that notice must be "tailored to the capacities and circumstances of those who are to be heard." Goldberg v. Kelly, 397 U.S. 254, 268–69 (1970). Another potential avenue would be to bring a procedural due process challenge to evictions given the current procedures in place due to COVID-19. For a robust review of the available options, see NAT'L HOUS. L. PROJECT, *supra* note 158.

230. *See* Julian Moradian, *A New Era of Legal Services: The Elimination of Unauthorized Practice of Law Rules to Accompany the Growth of Legal Software*, 12 WM. & MARY BUS. L. REV. 247, 267 (2020) (explaining that citizens in Arizona had the opportunity to vote through a referendum on whether to approve unauthorized practice of law rules).

231. Pernell v. Southall Realty, 416 U.S. 363, 385 (1974).